



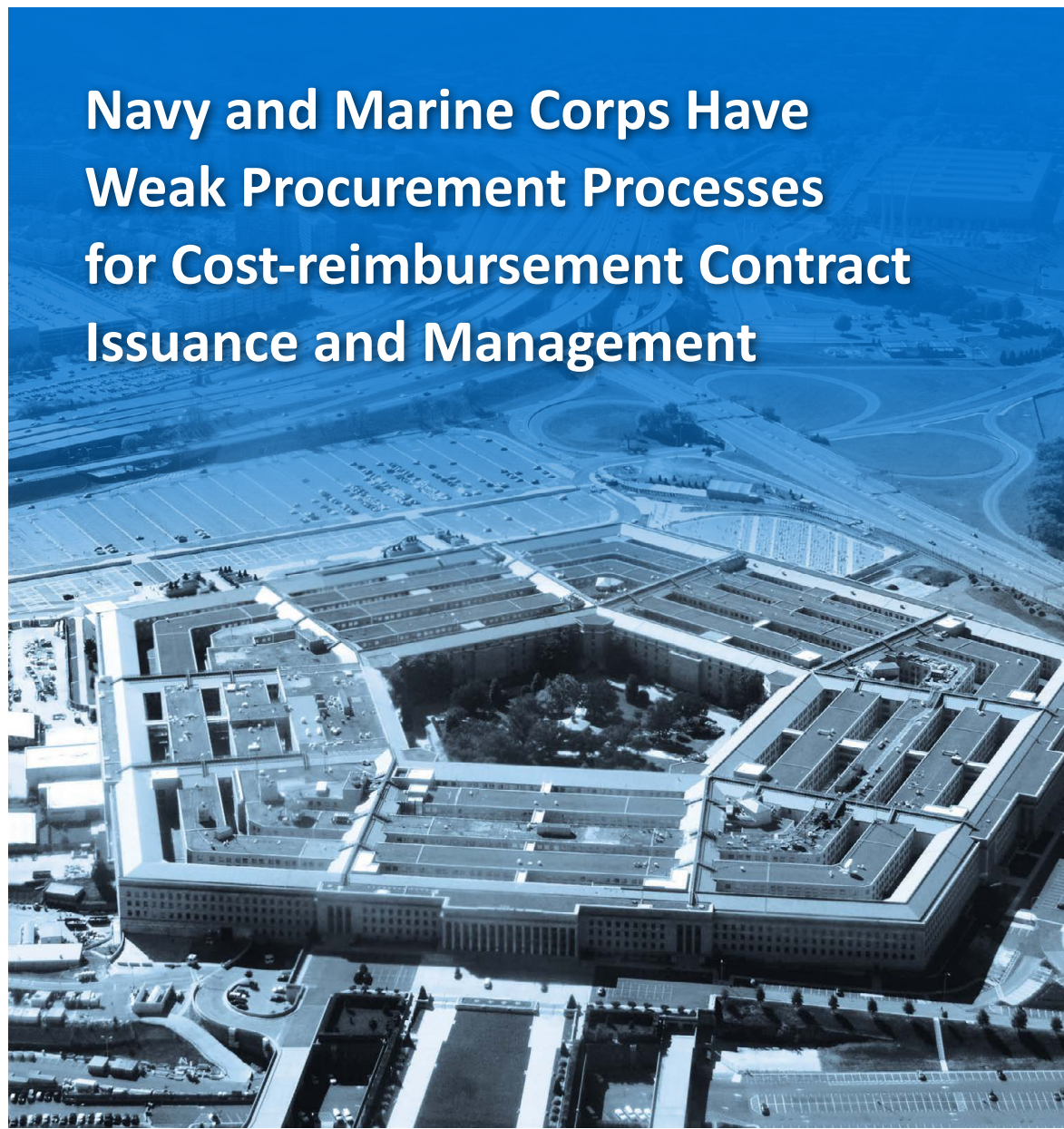
INSPECTOR GENERAL

U.S. Department of Defense

JULY 11, 2014



Navy and Marine Corps Have Weak Procurement Processes for Cost-reimbursement Contract Issuance and Management



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Results in Brief

Navy and Marine Corps Have Weak Procurement Processes for Cost-reimbursement Contract Issuance and Management

July 11, 2014

Objective

We are required to perform this audit in accordance with the FY 2009 National Defense Authorization Act, section 864, "Regulations on the Use of Cost Reimbursement Contracts." Our objective was to determine whether the Navy and Marine Corps complied with interim Federal Acquisition Regulation (FAR) revisions on the use of cost-reimbursement contracts. This is the fourth in a series of reports on DoD compliance with the interim rule for the use of cost-reimbursement contracts. We reviewed a nonstatistical sample of 170 contracts (77 basic contracts and 93 orders) out of 9,973 Navy and Marine Corps contract actions, valued at over \$32 billion from March 17, 2011, through February 29, 2012.

Finding

Of the 170 contracts reviewed, valued at about \$7.7 billion, Navy and Marine Corps contracting personnel did not consistently implement the FAR revisions, called the interim rule, for 134 contracts, valued at about \$7.54 billion. Contracting personnel issued contracts that did not follow the interim rule because they were not clear about interim rule requirements or were unaware of the interim rule. As a result, contracting personnel continue to issue cost-reimbursement contracts that may increase DoD's contracting risks because cost-reimbursement contracts provide less incentive for contractors to control costs.

Finding (cont'd)

We also completed a subsequent review of 29 contracts at Naval Sea Systems Command Headquarters and Quantico Marine Corps Base approximately 1 year after our initial site visit and determined that minor improvements occurred with the contract issuance processes.

Recommendations

We recommend that Naval Sea Systems Command Headquarters and Naval Supply Center–San Diego emphasize FAR revisions to contracting personnel; include a statement on the contracting officer's representative acceptance forms that the representative acknowledge and return the form with signature; and include documentation in the contract files discussing an assessment of the contractor's accounting system. In addition, Naval Sea Systems Command Headquarters should establish better communication between the requiring component and contracting personnel.

We recommend that Marine Corps Systems Command emphasize FAR revisions to contracting personnel for the use of cost-reimbursement contracts; establish better communication between the requiring component and contracting personnel; and develop controls to ensure that a contracting officer's representative is assigned to each contract at award.

Management Comments and Our Response

We received comments from the Navy and Marine Corps in response to a draft report. The Navy and Marine Corps will revise policies and processes to better adhere to the interim rule requirements. Comments addressed all specifics of the recommendations, and no further comments are required.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters		1.a, 1.b, 1.c, 1.d, 1.e, and 1.f
Chief of the Contracting Office, Naval Supply Center–San Diego		2.a, 2.b, and 2.c
Assistant Commander of Contracts, Marine Corps Systems Command		3.a, 3.b, 3.c, 3.d, and 3.e



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

July 11, 2014

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
NAVAL INSPECTOR GENERAL**

**SUBJECT: Navy and Marine Corps Have Weak Procurement Processes for Cost-Reimbursement
Contract Issuance and Management (Report No. DODIG-2014-092)**

We are providing this report for review and use. Of the 170 contracts reviewed, valued at about \$7.7 billion, Navy and Marine Corps contracting personnel did not consistently implement the interim rule for 134 contracts, valued at about \$7.54 billion. We are required to perform this audit in accordance with the FY 2009 National Defense Authorization Act, Section 864, "Regulation on the Use of Cost Reimbursement Contracts." This is the fourth in a series of audit reports on DoD Compliance with the interim rule for the use of cost-reimbursement contracts. The final rule was published in the Federal Register on March 2, 2012, without significant changes that would affect our audit objective.

We considered management comments on a draft of this report when preparing the final report. Comments from the Navy and Marine Corps addressed all specifics of the recommendations and conformed to the requirements of DoD Directive 7650.3; therefore, we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to Deborah L. Culp at (703) 604-9335 (DSN 664-9335).

A handwritten signature in cursive script, reading "Amy J. Frontz", is positioned above the printed name.

Amy J. Frontz
Principal Assistant Inspector General
for Auditing

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Introduction

Objective

Our objective was to determine whether Navy and Marine Corps contracting personnel complied with interim Federal Acquisition Regulation (FAR) revisions regarding the use of cost-reimbursement¹ contracts. Specifically, we determined whether Navy and Marine Corps contracting personnel implemented the FAR revisions, called the interim rule, by documenting:

- that approval for the cost-reimbursement contract was at least one level above the contracting officer;
- that the use of cost-reimbursement contracts was justified;
- how the requirements under the contract could transition to firm-fixed price in the future;
- that Government resources were available to monitor the cost-reimbursement contract; and
- that contractors had an adequate accounting system in place at contract award.

We also determined whether Navy and Marine Corps personnel were intentionally misclassifying contracts as firm-fixed price to avoid the increased cost-reimbursement contract documentation requirements.

We issued separate reports for each of the Services and issued one report on Missile Defense Agency and the Defense Microelectronics Activity contracts, and we plan to issue a summary report. This is the fourth report in a series of audits and includes contracts issued by the Navy and Marine Corps at four sites. See Appendix A for the scope and methodology and prior coverage related to the objective and this series of reports.

Background

Section 864 of the FY 2009 National Defense Authorization Act, P.L. 110-417, required FAR revisions regarding the documentation of decisions and approvals necessary

¹ We use “cost reimbursement” to describe any type of contract other than firm-fixed-price contracts throughout the report, such as labor hour and time and materials contracts.

before issuance of other than firm-fixed-price contracts. It also requires that the DoD Inspector General to audit DoD's compliance with the changes within 1 year of policy issuance. Federal Acquisition Circular (FAC) 2005-50, issued March 16, 2011, implemented the required revisions on an interim basis. See Appendix B for a copy of the interim rule. This interim rule was effective immediately and was not subject to public comment before issuance. FAC 2005-50 amended FAR Part 7, "Acquisition Planning;" FAR Part 16, "Types of Contracts;" and FAR Part 42, "Contract Administration and Audit Services." The final rule was published in the Federal Register on March 2, 2012, without significant changes that would affect our audit objective.

Interim Rule Requirements and Our Interpretation

We divided our objective into five areas based on the interim rule. We needed to interpret parts of the interim rule for each of these areas to determine what we would accept as adequate documentation in the contract file. These five areas include (1) approval level; (2) justification; (3) transition strategy; (4) adequate resources; and (5) adequate accounting system. Contracting personnel were required by the interim rule to include the justification, approval, and transition areas of our objective in the acquisition planning documentation. For each of these areas, we accepted documentation anywhere in the contract file because some of the acquisition plans were completed before the interim rule. Acquisition planning is the coordinated, combined, and integrated efforts of all personnel affected by the acquisition into a plan that timely fulfills the need at a fair and reasonable cost to the Government. Contracting personnel were not required by the interim rule to document whether adequate resources or an accounting system was available specifically within the acquisition planning documentation.

Approval

Contracting personnel were required by the interim rule to obtain approval of a cost-reimbursement contract at least one level above the contracting officer. FAC 2005-50 states "the contracting officer shall document the rationale for selecting the contract type in the written acquisition plan and ensure that the plan is approved and signed at least one level above the contracting officer." Contracting personnel were required by the interim rule to document this approval in the acquisition plan. We accepted any documentation in the contracting files that stated the contract type was cost-reimbursement and was reviewed and signed by an official above the contracting officer as evidence of having met the interim rule requirement.

Justification

Contracting personnel were required by the interim rule to justify the use of a cost-reimbursement contract. FAC 2005-50 states:

[a]cquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, ([for example], complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. . . .

Contracting personnel were required by the interim rule to document the justification in the acquisition plan. We determined that Navy and Marine Corps contracting personnel followed the interim rule by completing a determination and finding memorandum on contract type for inclusion in the contract file or included a discussion of research and development efforts with results that cannot be precisely described in advance. A determination and finding memorandum is a form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions.

Transition Strategy

Contracting personnel were required by the interim rule to document the potential of cost-reimbursement contracts to transition to firm-fixed-price contracts. FAC 2005-50 states:

For each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract requirements, [for example], contract line items (CLINS), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts.

We interpreted this section of the interim rule to require an explanation of the potential to transition to a firm-fixed-price contract or a justification as to why the contract could not be transitioned. Contracting personnel were required by the interim rule to document this strategy in the acquisition plan. In addition to their documentation, we determined that the interim rule was followed if they issued contracts that had both firm-fixed price and cost-reimbursement contract line-item numbers along with

a statement in the contract file that allowed the contract line-item numbers to be used when appropriate. We also determined a contract met the intent of the interim rule if the award could not be transitioned, for various reasons, to a firm-fixed-price contract.

Adequate Resources

Contracting personnel were required by the interim rule to document that adequate resources are available to manage a cost-reimbursement contract. FAC 2005-50 states:

A cost-reimbursement contract may be used only when—Adequate Government resources are available to award and manage a contract other than firm-fixed-priced (see 7.104(e)) including—(i) Designation of at least one contracting officer’s representative (COR) qualified in accordance with 1.602-2 has been made prior to award of the contract or order.

We interpreted this section of the interim rule to require evidence of a contracting officer’s representative (COR) or similarly qualified individual assigned to the contract. A COR is nominated in writing and authorized by the contracting officer to perform specific administrative and technical elements on the contract. We reviewed the COR nomination letter, signed acceptances by the CORs, and COR training documents. Contracting personnel were not required by the interim rule to document this evidence in any specific location of the contract file. Although assigning a COR to the contract identifies an individual to oversee a contract, it does not always indicate that adequate Government resources are available to monitor the contract as required by the interim rule. We identified the assignment of a COR on the contracts rather than testing the adequacy of the CORs assigned.

Adequate Accounting System

Contracting personnel were required by the interim rule to determine the adequacy of the contractor’s accounting system during the entire period of performance for cost-reimbursement contracts. FAC 2005-50 states that the contractor’s accounting system should be adequate during the entire period of contract performance. Based on this guidance, we required documentation from the contracting officer that concluded the accounting system was adequate. At a minimum, we required a statement in the file that the accounting system was adequate based on information from the Defense Contract Audit Agency or Defense Contract Management Agency officials responsible for monitoring the contractor. We also accepted the contracting officer’s conclusion or other documents, such as rate verifications and e-mails, from the Defense Contract Audit Agency and Defense Contract Management Agency as adequate documentation.

We focused our audit on identifying whether the contracting officer determined if the accounting system was adequate at contract award, rather than during the entire period of performance, as required by the interim rule.

Contracts Initially Reviewed

Our data queries in the Federal Procurement Data System–Next Generation identified 9,973 cost-reimbursement, labor-hour, or time-and-materials contract actions, valued at over \$32 billion, on 2,412 contracts, issued by the Navy and Marine Corps from March 17, 2011, through February 29, 2012. These figures included the value of all options and any firm-fixed-price portions of the contracts. To perform the review, we selected four Navy and Marine Corps sites based on a combination of cost-reimbursement award amounts and number of cost-reimbursement contracts issued. The sites visited were: (1) Space and Naval Warfare Systems Command (SPAWAR), Charleston, South Carolina; (2) Naval Sea Systems Command (NAVSEA) Headquarters, Washington, D.C.; (3) Naval Supply Systems Command (NAVSUP), San Diego, California; and (4) Quantico Marine Corps Base (QMCB), Virginia. At Quantico, we specifically reviewed contracts issued by Marine Corps Systems Command. At the four sites we reviewed a nonstatistical sample of 170 contracts, with cost-reimbursement portions, valued at about \$7.7 billion. Table 1 shows the number of basic contracts, the task or delivery orders reviewed, and the contract value at each site.

Table 1. Contracts Reviewed

Site	Basic Contracts	Task/Delivery Order	Total	Contract Value (in billions)*
SPAWAR–Charleston	7	35	42	\$0.338
NAVSEA Headquarters	29	10	39	3.753
NAVSUP–San Diego	29	21	50	3.547
QMCB	12	27	39	0.057
Total	77	93	170	\$7.695

* Contract value includes potential total of only cost-reimbursement elements and do not total correctly because of rounding.

Supplemental Contract Review

We revisited NAVSEA Headquarters and QMCB in September 2013 to determine whether improvements were made in the cost-reimbursement contract issuing processes after our initial site visits from April through July 2012. We nonstatistically sampled from

a universe of contracts using criteria similar to our original review, but covering a period of issuance from February 1, 2013, through July 31, 2013. We reviewed 14 contracts at NAVSEA Headquarters and 15 contracts at QMCB as part of this supplemental review, with a total value of about \$9.59 billion, mostly from NAVSEA Headquarters contracts. These contracts are not included in Table 1 and the results of the supplemental review are presented separately in the Finding section of this report. See Appendix D for specific information on our supplemental contract review.

The Small Business Innovation Research Program

The implementation of the interim rule is affected by other DoD contracting initiatives, such as the Small Business Innovation Research (SBIR) program. The SBIR program is a three-phase program that encourages domestic small businesses to engage in Federal research and development that has the potential for commercialization. The SBIR program was developed to increase small business opportunity in federally funded research and development, stimulate high-tech innovation, and increase private-sector commercialization. The SBIR program was established under the Small Business Innovation Development Act of 1982; the U.S. Small Business Administration serves as the coordinating agency. Phase I of the program is designed for exploration of the technical merit or feasibility of an idea or technology. A firm-fixed-price contract is almost always used for this phase. Phase II, typically a cost-plus-fixed-fee contract, consists of the research and development work, in which the developer also evaluates commercialization potential. During Phase III, the developer moves toward commercialization of the innovation. SBIR program funds cannot be used for Phase III. We did not target or avoid SBIR contracts as part of our nonstatistical sample because the interim rule does not include an exception for SBIR contracts.

The SBIR Desk Reference for Contracting and Payment states that according to FAR Subpart 16.3, “Cost-Reimbursement Contracts,” a cost-reimbursement contract may be used only when the contractor’s accounting system is adequate for determining costs applicable to the contract and requires Government surveillance during the performance of the contract.

Review of Internal Controls

DoD Instruction 5010.40, “Managers’ Internal Control Program Procedures,” May 30, 2013, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal

control weaknesses for implementing the changes required by the interim rule regarding the use of cost-reimbursement contracts. The four sites visited did not consistently update local procedures or other guidance for issuing and administering cost-reimbursement contracts. Specifically, the Navy and Marine Corps did not always have procedures to approve or justify the use of cost-reimbursement contracts properly and did not always document the potential of cost-reimbursement contracts to transition to firm-fixed-price contracts. Navy and Marine Corps contracting personnel did not consistently verify that personnel acknowledged their duties regarding contract oversight. Additionally, the Navy, Marine Corps, and other DoD components responsible for monitoring contractor accounting systems did not always verify the adequacy of the contractor's accounting system at contract award. We will provide a copy of the final report to the senior official in charge of internal controls in the Navy and Marine Corps.

Finding

The Navy and Marine Corps Inconsistently Implemented the Interim Rule

Of the 170 contracts reviewed, valued at about \$7.7 billion, Navy and Marine Corps contracting personnel did not consistently implement the interim rule for 134 contracts, valued at about \$7.54 billion. Navy and Marine Corps contracting personnel fully met the interim rule on 36 of the 170 contracts, valued at about \$151 million.

Specifically, Navy and Marine Corps contracting personnel did not:

- Obtain approval for the use of a cost-reimbursement contract for 39 contracts valued at about \$91 million, of the 170 contracts.
- Justify the use of a cost-reimbursement contract for 50 contracts, valued at about \$459 million, of the 170 contracts.
- Document the possibility of a transition to a firm-fixed-price contract for 61 contracts, valued at about \$1.14 billion, of the 170 contracts.
- Ensure adequate Government resources available for 85 contracts, valued at about \$6.94 billion, of the 170 contracts.
- Verify the adequacy of the contractor's accounting system for 56 contracts, valued at about \$3.35 billion, of the 170 contracts.

Navy contracting personnel stated they issued contracts that did not meet the interim rule because they were unaware of the interim rule requirements. A Marine Corps official attributed many non-compliant issues to a lack of clarity regarding the interim rule requirements. Specifically for monitoring, they also did not receive acknowledgement from the COR that they were aware of their duties and able to monitor the contract. Additionally, we were provided contract files at NAVSEA Headquarters that did not contain the necessary information to document compliance with the interim rule.

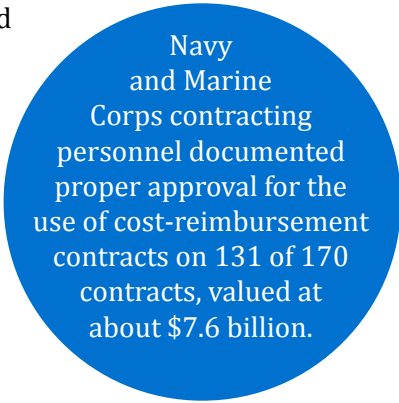
As a result, Navy and Marine Corps contracting personnel continue to issue cost-reimbursement contracts that may inappropriately increase the Navy and Marine Corps' contracting risks because cost-reimbursement contracts provide less incentive for contractors to control costs.

More Consistent Documentation Procedures Needed to Fully Implement Federal Acquisition Regulation Revisions

Navy and Marine Corps contracting personnel fully implemented FAR revisions on 36 of the 170 contracts, valued at about \$151 million. SPAWAR–Charleston contracting personnel were responsible for 26 of the Navy and Marine Corps contracts that fully met the interim rule. Navy and Marine Corps contracting personnel implemented portions of the interim rule for the other 134 contracts, but they did not consistently include documentation in the contract files to meet the interim rule. Contracting personnel documented elements of the interim rule in the acquisition plan, business clearance memorandum, COR nomination letters, or in the determination and findings of contract type. We interpreted the interim rule to apply to task or delivery orders issued after the effective date of the interim rule (March 16, 2011), regardless of the timing of the basic contract award. See Appendix C for tables showing interim rule compliance by contract. The Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters; Chief of the Contracting Office, Naval Supply Center–San Diego; and the Assistant Commander of Contracts, Marine Corps Systems Command should emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts in guidance and training courses.

Approval at Least One Level Above the Contracting Officer for a Cost-Reimbursement Contract Varied by Site

Contracting personnel at SPAWAR–Charleston and NAVSUP–San Diego generally met the interim rule requirement to approve the use of a cost-reimbursement contract at least one level above the contracting officer, whereas contracting personnel at NAVSEA Headquarters and QMCB did not always meet the interim rule. Navy and Marine Corps contracting personnel documented proper approval for the use of cost-reimbursement contracts on 131 of 170 contracts, valued at about \$7.6 billion. Table 2 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.



Navy and Marine Corps contracting personnel documented proper approval for the use of cost-reimbursement contracts on 131 of 170 contracts, valued at about \$7.6 billion.

Table 2. Results of Approval at Least One Level Above the Contracting Officer

Site	Total Contracts	Did Not Meet Interim Rule
SPAWAR–Charleston	42	2
NAVSEA Headquarters	39	21
NAVSUP–San Diego	50	1
QMCB	39	15
Total	170	39

NAVSEA Headquarters contracting personnel did not meet the interim rule requirement to document approval of a cost-reimbursement contract one level above the contracting officer for 21 of the 39 contracts, valued at about \$77.8 million. NAVSEA contracting personnel stated that shipbuilding contracts were on a cost-reimbursement basis; therefore, they did not document approval in many cases. They also stated that many of their contracts were issued under broad agency announcements related to the SBIR program, which meant that the acquisition planning was conducted before the contract award and that the contract type was approved because the program consists of cost contracts for research and development. Although the program suggests the use of certain types of contracts, contracting officers should still document the need to issue a cost-reimbursement contract as required by the interim rule. The Federal Register, volume 77, number 42, (2012) discussed comments obtained in response to the cost-reimbursement interim rule and formalized the revisions at that time. One commenter recommended that the final rule exempt research and development contracts from the requirements; however, the response explained that there were no exemptions for research and development contracts under the Duncan Hunter National Defense Authorization Act for fiscal year 2009. The Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters should develop procedures to ensure that all cost-reimbursement contracts are approved at least one level above the contracting officer.

QMCB contracting personnel did not meet the interim rule requirement to document approval of cost-reimbursement contracts one level above the contracting officer for 15 of the 39 contracts, valued at about \$11.2 million. QMCB contracting personnel used multiple determination and finding templates to complete the contract issuance process. We reviewed some determination and findings memorandums for contract type and verified that they did not include a section to document review above the contracting officer. The Assistant Commander of Contracts, Marine Corps Systems Command should develop a single template with a section to document approval one level above the contracting officer for cost-reimbursement contracts.

Justification Documenting the Use of a Cost-Reimbursement Contract Type Varied by Site

Contracting personnel at SPAWAR–Charleston and NAVSUP–San Diego generally satisfied the interim rule requirement to justify a cost-reimbursement type contract whereas contracting personnel at NAVSEA Headquarters and QMCB did not consistently meet the interim rule requirement. Contracting personnel met the interim rule requirement to justify a cost-reimbursement type contract for 120 of the 170 contracts, valued at about \$7.24 billion. However, contracting personnel did not satisfy the interim rule’s requirement to justify a cost-reimbursement type contract for 50 contracts, valued at about \$459 million, because contracting personnel generally stated that they were not aware of the interim rule. We accepted documentation of prior acquisition planning and justification to issue a cost-reimbursement contract. We also interpreted the interim rule to require justification of contract type regardless of the contract line-item structure. Table 3 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

Table 3. Justified the Use of a Cost-reimbursement Contract Type

Site	Total Contracts	Did Not Meet Interim Rule
SPAWAR–Charleston	42	2
NAVSEA Headquarters	39	22
NAVSUP–San Diego	50	11
QMCB	39	15
Total	170	50

NAVSEA Headquarters contracting personnel did not satisfy the interim rule requirement to justify a cost-reimbursement type contract on 22 of the 39 contracts, valued at about \$287 million. NAVSEA Headquarters contracting personnel stated they were unaware of the interim rule requirements. Additionally, they stated that many of the awards were for the procurement and sustainment of the fleet, which were generally accepted as cost-reimbursement in nature without further justification for contract type. Because NAVSEA Headquarters improved to almost full compliance regarding justification during a subsequent review that we discuss later in the report, we will not make a recommendation for improvement in this area.

Documentation to Support Efforts to Transition Subsequent Requirements to Firm-Fixed-Price Contracts Varied by Site

Contracting personnel at SPAWAR–Charleston and NAVSUP–San Diego generally satisfied the interim rule requirement to document efforts to transition to a firm-fixed-price contract. NAVSEA Headquarters and QMCB generally did not meet the interim rule requirement to document the transition to firm-fixed-price contracts. Contracting personnel met the interim rule requirement to document the efforts to transition to a firm-fixed-price contract for 109 of the 170 contracts, valued at about \$6.55 billion. However, contracting personnel did not satisfy the interim rule’s requirement for documenting the efforts to transition to a firm-fixed-price contract for the remaining 61 contracts, valued at about \$1.14 billion. Table 4 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

Table 4. Results of Efforts to Transition Subsequent Contracts to Firm-Fixed Price

Site	Total Contracts	Did Not Meet Interim Rule
SPAWAR–Charleston	42	5
NAVSEA Headquarters	39	27
NAVSUP–San Diego	50	13
QMCB	39	16
Total	170	61

NAVSEA Headquarters and QMCB did not consistently meet the interim rule requirement to document transition to a firm-fixed-price contract. NAVSEA Headquarters contracting personnel did not meet the interim rule on 27 of the 39 contracts, valued at about \$976 million. QMCB did not meet the rule on 16 of the 39 contracts, valued at about \$9.8 million. NAVSEA Headquarters and QMCB contracting personnel both stated that the lack of awareness of the interim rule was probably the reason that this information was not included in the contract files. The Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters and the Assistant Commander of Contracts, Marine Corps Systems Command should emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts and develop checklists and guides that can be used by contracting personnel regarding the extra planning and oversight of cost-reimbursement contracts.

When visiting other DoD sites as part of this series of audits, we determined two best practices that could also increase compliance with the interim rule requirement to have a transition strategy to firm-fixed-price contracts. Many of the sites we visited that generally complied with this requirement issued hybrid contracts. A hybrid contract contains multiple contract line items with different pricing structures so that the contracting officer may choose whether cost-reimbursement or firm-fixed price is most appropriate at the time the order was awarded. We recommend that the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters and the Assistant Commander of Contracts, Marine Corps Systems Command promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each order. Additionally, we determined that establishing communication links for all personnel involved throughout the contracting process from establishing requirements through contract closeout resulted in increased compliance with the interim rule. We recommend that the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters and the Assistant Commander of Contracts, Marine Corps Systems Command establish better communication channels between the requiring component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts when possible.

Documenting That Adequate Government Resources Were Available to Monitor Award Varied by Site

Contracting personnel at SPAWAR–Charleston generally satisfied the interim rule requirement to ensure that adequate Government resources were available to monitor the award, whereas NAVSEA Headquarters, NAVSUP–San Diego, and QMCB generally did not meet the interim rule requirement. Contracting personnel met the interim rule requirement to ensure that adequate Government resources were available to monitor the award for 85 of the 170 contracts, valued at about \$759 million. However, contracting personnel did not satisfy the interim rule’s requirement to ensure that adequate Government resources were available to monitor the award for the remaining 85 contracts, valued at about \$6.94 billion. Table 5 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

However, contracting personnel did not satisfy the interim rule’s requirement to ensure that adequate Government resources were available to monitor the award for the remaining 85 contracts, valued at about \$6.94 billion.

Table 5. Results of Government Resources Available to Monitor Award

Site	Total Contracts	Did Not Meet Interim Rule
SPAWAR–Charleston	42	8
NAVSEA Headquarters	39	31
NAVSUP–San Diego	50	25
QMCB	39	21
Total	170	85

NAVSEA Headquarters contracting personnel did not satisfy the interim rule requirement to ensure that Government resources were available to adequately monitor the contract on 31 of the 39 contracts, valued at about \$3.35 billion. We reviewed the contract information provided and were unable to locate this information in the files of the 31 contracts. According to the NAVSEA contracting personnel, a COR should have been designated and documented in most of the 31 contract files. However, they were unable to provide us with any documents in a timely manner that a COR was assigned to the contracts.

NAVSUP–San Diego contracting personnel did not satisfy the interim rule requirement to ensure that Government resources were available to adequately monitor the contract on 25 of the 50 contracts, valued at about \$3.38 billion. We obtained COR acceptance letters for most of the remaining 25 contracts, but the letters in the contract files were never acknowledged by the COR. To fully meet the interim rule, the contracting officer should have assurance that the COR is aware of their duties and has accepted responsibility regarding the contract oversight. The Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters and the Chief of the Contracting Office, Naval Supply Center–San Diego should require contracting officers to include acknowledgement with signature on contracting officer’s representative acceptance forms as part of the duties in properly administering contracts.

QMCB contracting personnel did not satisfy the interim rule requirement to ensure that Government resources were available to adequately monitor the contract on 21 of the 39 contracts, valued at about \$13 million. We determined that QMCB contracting personnel had multiple reasons for not meeting the interim rule on the 21 contracts. For a portion of the awards, the contracting officers never assigned a COR because the contract was a SBIR award with a low-dollar value. Within a series of task orders, we obtained a COR acceptance letter specific to a single task order, but

that letter was included as documentation in multiple task order files, therefore, we did not accept it as documentation for the series of orders. Additionally, we obtained some COR letters that were dated significantly after contract award. The Assistant Commander of Contracts, Marine Corps Systems Command should develop controls to ensure that a contracting officer's representative is assigned to each contract at contract award to meet the requirements of the interim rule.

Documentation of Adequate Accounting Systems Varied by Site

Contracting personnel at SPAWAR–Charleston generally satisfied the interim rule requirement to document the adequacy of the contractor's accounting system, whereas NAVSEA Headquarters, NAVSUP–San Diego, and QMCB inconsistently met the interim rule requirement. Contracting personnel met the interim rule requirement to document the adequacy of the contractor's accounting system for 114 of the 170 contracts, valued at about \$4.35 billion. However, contracting personnel did not satisfy the interim rule's requirement to document the adequacy of the contractor's accounting system for the remaining 56 contracts, valued at about \$3.35 billion. Table 6 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

Table 6. Results of Adequate Accounting System in Place

Site	Total Contracts	Did Not Meet Interim Rule
SPAWAR–Charleston	42	10
NAVSEA Headquarters	39	14
NAVSUP–San Diego	50	16
QMCB	39	16
Total	170	56

NAVSEA Headquarters contracting personnel did not meet the interim rule criteria to have an adequate accounting system in place on 14 of the 39 contracts, valued at about \$2.69 billion. We reviewed contract files that had a statement that the accounting system was adequate, but the analysis did not state that the system was adequate to control a cost-reimbursement contract; therefore, we determined these awards did not meet the interim rule. Additionally, we reviewed contract files that had no information about the contractor's accounting system in the file and also determined they did

not meet the interim rule. We recommend that the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters include a section in the business clearance memorandum, or similar document, to annotate the contracting officer's analysis and data relied on for the assessment of the contractor's accounting system for cost-reimbursement contracts.

NAVSUP-San Diego contracting personnel did not meet the interim rule criteria to have an adequate accounting system in place on 16 of the 50 contracts valued at about \$469 million. For 6 of the 16 contracts not meeting the interim rule requirements, we obtained documentation that the contracting officer coordinated with the Defense Contract Audit Agency during the award process, but we determined that there was not sufficient information in the contract files to make an assessment on the contractor's accounting system. For the remaining awards, we could not determine the contracting officer's efforts to assess the accounting system. We recommend that the Chief of the Contracting Office, Naval Supply Center-San Diego include a section in the business clearance memorandum, or similar document, to annotate the contracting officer's analysis and data relied on for the assessment of the contractor's accounting system for cost-reimbursement contracts.

QMCB contracting personnel did not meet the interim rule criteria to have an adequate accounting system in place on 16 of the 39 contracts, valued at about \$19.9 million. For five task orders reviewed, we determined that QMCB contracting personnel requested Defense Contract Audit Agency for assistance but did not determine the adequacy of the accounting system before issuing the cost-reimbursement contracts. Most of the remaining contracts were issued without sufficient supporting information in the contract file to determine that the accounting system was adequate at contract award. Because QMCB improved to better compliance regarding an assessment of the accounting system during a subsequent review that we discuss below, we will not make a recommendation for improvement in this area.

Some Improvements Identified During Subsequent Site Visits

In addition to the original site visits from April through July 2012, the audit team revisited NAVSEA Headquarters and QMCB in September 2013. The purpose of these visits was to update our information by reviewing more recent awards to determine whether the contracting officers made improvements after our original site visits. The contracts reviewed during the subsequent visits were issued from February 1, 2013, through July 31, 2013. The team reviewed a nonstatistical sample of 14 NAVSEA

Headquarters contracts, valued at about \$9.57 billion, and 15 QMCB contracts, valued at about \$17.62 million. The team reviewed the contracts with the same objective as the original site visits. Additionally, during the subsequent visits, the team requested any revised training manuals, guidance, checklists, or similar items implemented over the past year to increase awareness and compliance with these FAR revisions.

NAVSEA Headquarters contracting personnel marginally improved compliance with the interim rule during our subsequent site visit. However, NAVSEA Headquarters contracting personnel significantly improved contract compliance during our subsequent visit in the areas of approval and justification of cost-reimbursement contracts; but, only minor improvement occurred in the other three areas. We reviewed contract files during the subsequent review that included more information applicable to the interim rule and less noncompliance overall in the five areas we assessed. However, NAVSEA Headquarters personnel did not fully meet the interim rule on 10 of the 14 contracts.

QMCB contracting personnel also marginally improved compliance with the interim rule during our subsequent site visit. However, QMCB personnel significantly improved in the areas of justification that a cost-reimbursement award was required and that the contractor had an adequate accounting system in place to tracking costs. That said, we determined that 11 of the 15 contracts reviewed did not meet the interim rule regarding approval one-level above the contracting officer and that 11 of the 15 contracts also did not adequately document how the award may transition to firm-fixed price in the future. See Table 7 for specific information on the subsequent contract review.

Table 7. Subsequent-Visit Contract Summary

	NAVSEA Headquarters	QMCB
Total Contracts Reviewed	14	15
Contracts That Did Not Meet Interim Rule		
Approval	2	11
Justification	2	0
Transition	6	11
Oversight	6	6
Accounting	6	3
Total Contracts With at Least One Noncompliant Element	10	13

NAVSEA Headquarters and QMCB contracting officers improved compliance with the interim rule in specific areas. We omitted recommendations to reflect areas where significant improvement was noted during our subsequent review. Implementing the remaining recommendations should address the areas of noncompliance that we identified during our subsequent review.

Firm-Fixed-Price Contracts Properly Classified

Contracting officials generally classified firm-fixed-price contracts correctly and did not avoid the increased cost-reimbursement contract documentation requirements by purposely miscoding contracts. We reviewed 188 contracts identified as firm-fixed-price contracts in the Electronic Document Access system that were issued by contracting personnel at the four Navy and Marine Corps sites. We reviewed some contracts that contained a small cost-reimbursement portion within the contract, but if the contract was predominantly firm-fixed price, we considered the award classified correctly. We determined that 4 of the 188 contracts may have been improperly classified as firm-fixed price and should have been treated as cost-reimbursement contracts. However, we concluded that contracting personnel were properly classifying contracts because of the small number of contracts we questioned.

Conclusion

Of the 170 contracts we initially reviewed, valued at \$7.7 billion, contracting personnel did not consistently implement the interim rule for 134 contracts, valued at about \$7.54 billion. SPAWAR-Charleston contracting personnel fully met the interim rule on 26 contracts of the 36 fully compliant Navy and Marine Corps contracts. During a subsequent review to NAVSEA Headquarters and QMCB, we determined that contracting officers were issuing awards with increased compliance of the interim rule, but opportunities to improve compliance still existed. Contracting personnel continue to issue cost-reimbursement contracts that may inappropriately increase the contracting risks because cost-reimbursement contracts provide less incentive for contractors to control costs. Contracting personnel will plan, issue, and oversee cost reimbursement contracts more effectively by fully implementing the FAR revisions.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters:

- a. Emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts.**

Naval Sea Systems Command Headquarters Comments

The Naval Sea Systems Command Deputy Inspector General, responding for the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters, agreed, stating that the Contracting Policy Office will provide a notice to all contracting personnel emphasizing the importance of documenting the decision on the type of contract in the business clearance memorandum. The estimated completion date is June 30, 2014.

- b. Develop checklists and guides that can be used by contracting personnel regarding the extra planning, approval, and oversight of cost-reimbursement contracts.**

Naval Sea Systems Command Headquarters Comments

The Naval Sea Systems Command Deputy Inspector General, responding for the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters, agreed, stating that the Acquisition Planning Guides, Contract Handbook, and training modules will be revised to reflect the updated acquisition regulations regarding cost-reimbursement contracts. The estimated completion date is September 30, 2014.

- c. Promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order.**

Naval Sea Systems Command Headquarters Comments

The Naval Sea Systems Command Deputy Inspector General, responding for the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters, agreed, stating that an article on the use of hybrid contracts will be prepared and issued to the acquisition workforce in their contract policy and program management competency newsletters. The estimated completion date is September 30, 2014.

- d. Establish better communication channels between the requiring component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts when possible.**

Naval Sea Systems Command Headquarters Comments

The Naval Sea Systems Command Deputy Inspector General, responding for the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters, agreed, stating that an article on the importance of transitioning from cost-reimbursement contracts to firm-fixed-price contracts when possible will be prepared and issued to the acquisition workforce in their contract policy and program management competency newsletters. The estimated completion date is September 30, 2014.

- e. Include on the contracting officer's representative acceptance forms a requirement that specifically states that the acknowledgement and return of the signed letter is part of the duties in properly administering the contract.**

Naval Sea Systems Command Headquarters Comments

The Naval Sea Systems Command Deputy Inspector General, responding for the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters, agreed, stating that they already have a policy in place that requires the contracting officer's representatives to acknowledge the appointment and return the letter to the contracting officer. The Deputy Inspector General considers this recommendation implemented.

- f. Include a section in the business clearance memorandum or similar document to annotate the contracting officer's analysis and data relied on for the assessment of the contractor's accounting system.**

Naval Sea Systems Command Headquarters Comments

The Naval Sea Systems Command Deputy Inspector General, responding for the Deputy Director of Contracting Policy, Naval Sea Systems Command Headquarters, agreed, stating that the current business clearance memorandum template includes a section for documenting the adequacy of the contractor's accounting system. The Deputy Inspector General also noted that the template was issued as part of the NAVSEA Contracts Handbook and was updated in March 2013. The Deputy Inspector General considers this recommendation implemented.

Our Response

Comments from the Deputy Inspector General addressed all specifics of the recommendations, and no further comments are required.

Recommendation 2

We recommend that the Chief of the Contracting Office, Naval Supply Center–San Diego:

- a. Emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts.**

Naval Supply Systems Command Comments

The Vice Commander, Naval Supply Systems Command, responding for the Chief of the Contracting Office, Naval Supply Center–San Diego, agreed, stating that Naval Supply Center–San Diego conducts monthly trainings incorporating Federal Acquisition Regulation revisions. They will provide training specifically on the interim rule requirements. Additionally, they will update internal controls and quality assurance programs to reflect the interim rule requirements. The estimated completion date is June 30, 2014.

Our Response

Comments from the Vice Commander addressed all specifics of the recommendation, and no further comment is required.

- b. Include on the contracting officer’s representative acceptance forms a requirement that specifically states that the acknowledgement and return of the signed letter is part of the duties in properly administering the contract.**

Naval Supply Systems Command Comments

The Vice Commander, Naval Supply Systems Command, responding for the Chief of the Contracting Office, Naval Supply Center–San Diego, agreed, stating that the contracting officer’s representative tracking tool is being used by Naval Supply Center–San Diego. The tool tracks the nomination, appointment, termination, and training of contracting

officer's representative. The appointment letter should be signed and returned to the contracting officer within 10 days. The letter will be uploaded to the tool and a copy will also be maintained in the contracting file.

Our Response

The contracting officer's representative tool was not fully deployed for the entire duration used for our contract sample. According to a March 21, 2011, memorandum issued by the Secretary of Defense for Acquisition, Technology, and Logistics, full deployment occurred in FY 2012. The series of contracts we reviewed that prompted this recommendation were issued on August 24, 2011.

We agree that continued use of the contracting officer's representative tool that tracks nominations and acceptances will adequately address the intent of our recommendation. Comments from the Vice Commander addressed all specifics of the recommendation, and no further comment is required.

- c. Include a section in the business clearance memorandum or similar document to annotate the contracting officer's analysis and data relied on for the assessment of the contractor's accounting system.**

Naval Supply Systems Command Comments

The Vice Commander, Naval Supply Systems Command, responding for the Chief of the Contracting Office, Naval Supply Center-San Diego agreed, stating that updated Navy Marine Corps Acquisition Regulation Supplement requires the contracting officer to determine the adequacy of the contractor's accounting system for awards above \$150,000. For awards below that amount, the Vice Commander stated that the Naval Supply Center-San Diego will revise internal controls and quality assurance assessments to include a review of the accounting system. The estimated completion date is June 30, 2014.

Our Response

Comments from the Vice Commander addressed all specifics of the recommendations, and no further comment is required.

Recommendation 3

We recommend that Assistant Commander of Contracts, Marine Corps Systems Command:

- a. Emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts.**

Marine Corps Systems Command Comments

The Marine Corps Systems Command Deputy Commander, Resource Management responding for the Assistant Commander of Contracts, Marine Corps Systems Command, agreed, stating that the contracts directorate will continue to conduct regular meetings with lead contracting officers with an emphasis on communicating these changes to the entire contracting directorate. They will also continue to issue regularly scheduled newsletters discussing changes and updates to contracting guidance.

- b. Develop checklists and guides that can be used by contracting personnel regarding the extra planning, approval, and oversight of cost-reimbursement contracts.**

Marine Corps Systems Command Comments

The Marine Corps Systems Command Deputy Commander, Resource Management responding for the Assistant Commander of Contracts, Marine Corps Systems Command, agreed, stating that the command uses a standard contract file checklist. The checklist is undergoing a revision and the new revision will include additional detail required when documenting the type of contract selected. Additionally, contracting personnel are required to complete a "Contract Documentation" course developed by Marine Corps Systems Command. The participant guides are being revised to reflect the additional detail required before issuing cost-reimbursement contracts. The updates to the course guides are estimated to be complete by July 2014.

- c. Promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order.**

Marine Corps Systems Command Comments

The Marine Corps Systems Command Deputy Commander, Resource Management responding for the Assistant Commander of Contracts, Marine Corps Systems Command,

agreed, stating that hybrid contracting will be identified as a best practice within the contracting competency. The agency's local contracting policies are scheduled to be updated in 2015, and the update will incorporate our recommendation.

- d. Establish better communication channels between the requiring component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts when possible.**

Marine Corps Systems Command Comments

The Marine Corps Systems Command Deputy Commander, Resource Management responding for the Assistant Commander of Contracts, Marine Corps Systems Command, agreed, stating that a command order originally issued in September 2009 will be revised in September 2014 to clearly require contracting personnel to be involved in the acquisition planning processes, including the type of contract, and that these processes include coordination with logistics, engineering, program management, and finance personnel. The Deputy Commander stated that the revised order includes a form that requires signatures by two levels of contracting personnel to ensure compliance with policy and regulation requirements. The estimated completion target is September 2014.

- e. Develop controls to ensure that a contracting officer's representative is assigned to each contract at contract award to meet the requirements of the interim rule.**

Marine Corps Systems Command Comments

The Marine Corps Systems Command Deputy Commander, Resource Management responding for the Assistant Commander of Contracts, Marine Corps Systems Command, agreed, stating that a command order is being developed to require a qualified contracting officer's representative to be assigned on all contracts that are not firm-fixed price. The command order will also implement qualification requirements based on contract type and complexity. Additionally, the command introduced a new training course and is now using a tool to track the assignment and training of the contracting officer's representatives. The Deputy Commander also noted that a contracting officer's representative coordinator position was established in November 2012. The

coordinator is responsible for oversight of the assignment, training, reporting, and performance standards of the program. The Assistant Commander of Contracts reviews the Contracting Officer's Representative files as part of an annual internal review. The estimated completion target is September 2014.

Our Response

Comments from the Deputy Commander addressed all specifics of the recommendations, and no further comment is required.

Appendix A

Scope and Methodology

We conducted work used as a basis for this report from February 2012 through August 2012 under DoD IG Project No. D2012-D000CG-0121.000. In August 2012, we decided to issue multiple reports as a result of those efforts. From August 2012 through August 2013, we primarily performed work on other reports in this series. In August 2013, we announced this project, DoD IG Project No. D2013-D000CG-0211.000, specifically for the Navy and Marine Corps contracts and conducted this performance audit through May 2014. We completed both projects in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The criteria we applied to this audit included Federal Acquisition Regulation (FAR) revisions required by section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 and implemented by the FAR interim rule, FAC 2005-50, 76 Federal Register 14542, "Proper Use and Management of Cost Reimbursement Contracts" (2011). We also reviewed the Small Business Innovation Research (SBIR) policy directive. The FAR sections updated by the interim rule include FAR 1.602-2, "Responsibilities;" FAR 1.604, "Contracting Officers Representative;" FAR 2.101, "Definitions;" FAR 7.103, "Agency-Head Responsibilities;" FAR 7.104, "General Procedures;" FAR 7.105, "Contents of Written Acquisition Plans;" FAR 16.103, "Negotiating Contract Types;" FAR 16.104, "Factors in Selecting Contract Types;" FAR 16.301-2, "Application;" FAR 16.301-3, "Limitations;" FAR 42.302, "Contract Administration Functions;" and FAR subpart 50.1, "Extraordinary Contractual Actions."

In addition to this report, we issued separate reports for the Army and Air Force as well as a report regarding the Missile Defense Agency and Defense Microelectronics Activity's implementation of the interim rule. We will also issue a separate summary report. This is the fourth in a series of audit reports. This audit was required by the FY 2009 National Defense Authorization Act, section 864, "Regulation on the Use of Cost Reimbursement Contracts." Our objective was to determine whether the Navy and Marine Corps has complied with interim Federal Acquisition Regulation revisions on the use of cost-reimbursement contracts.

To determine compliance with the interim rule, our methodology included reviewing basic contract and task and delivery order files that varied slightly from the specific interim rule requirements. In cases where the interim rule required areas to be documented in the acquisition plan, we expanded our review to the entire contract file because, in many cases, the acquisition plan was written and approved before the interim rule was issued. Additionally, we focused our audit to assess how contracting personnel determined that adequate resources were available to monitor the award by determining whether a COR or similar person was assigned to the contract at issuance. We did not determine whether the person assigned had an appropriate workload or was properly geographically located to monitor the award. We identified the assignment of a COR on the contracts rather than testing the adequacy of the COR assigned to the contract reviewed. Additionally, we determined whether the contracting officer documented that the contractor's accounting system was adequate at contract award and not during the entire period of contract performance as required by the interim rule.

Universe and Sample Information

We used Federal Procurement Data System–Next Generation data to identify a universe of cost-reimbursement, labor-hour, and time-and-materials contracts issued by Defense agencies and activities from March 17, 2011, through February 29, 2012. We included task and delivery orders issued after March 17, 2011, in our universe even if the basic contract was issued before the interim ruling. We limited the review to contracts valued at \$150,000 or above. We removed contract modifications from our universe because they were not new contract awards. We eliminated contracts that were issued on General Service Administration contracts. We queried all cost-reimbursement contracts from March 17, 2011, through February 29, 2012. Our universe consisted of 9,973 contract actions, valued at over \$32 billion; this included the value of all potential options and any firm-fixed-price portions of the contracts. To meet the DoD Inspector General's audit requirement in Section 864 of the FY 2009 National Defense Authorization Act, we determined that we would review one Defense agency and one Defense activity. We selected the four visited sites based on a combination of cost-reimbursement award amounts and number of cost-reimbursement contracts and task or delivery orders issued. The sites visited were: (1) Space and Naval Warfare Systems Command (SPAWAR), Charleston, South Carolina; (2) Naval Sea Systems Command (NAVSEA) Headquarters, Washington, District of Columbia; (3) Naval Supply Systems Command (NAVSUP), San Diego, California; and (4) Quantico Marine Corps Base (QMCB), Virginia.

Our nonstatistical sample consisted of 50 contracts from each of the 4 Navy and Marine Corps sites to total 200 contracts. We removed 30 contracts total from our combined sample of 200 contracts because they were misclassified and were actually firm-fixed-price contracts, not located at the site, or were actually issued on General Service Administration contracts and not identified as such in the Federal Procurement Data System–Next Generation. We also reviewed a nonstatistical sample of 29 contracts issued by NAVSEA Headquarters and QMCB from February 1, 2013, through July 31, 2013, with a total value of about \$9.58 billion as part of a subsequent review of contracts.

Review of Documentation and Interviews

We reviewed documentation maintained by the Navy and Marine Corps contracting offices. The documents reviewed included acquisition plans; business clearance memorandums; determination and finding for contract type; COR designation letters; COR training certificates; Defense Contract Audit Agency audit reports; and other documentation included in the contract file to comply with the interim rule. We reviewed contract award documentation including basic contract files from FY 2002 through FY 2013. We interviewed personnel responsible for awarding contracts, as well as quality assurance personnel, such as CORs, who were responsible for monitoring the contracts.

At each site visited, we determined whether Navy and Marine Corps contracting personnel implemented the interim rule by documenting:

- that the approval for the cost-reimbursement contract was at least one level above the contracting officer;
- the justification for the use of cost-reimbursement, time-and-materials, or labor-hour contracts;
- how the requirements under contract could transition to firm-fixed price in the future;
- that Government resources were available to monitor the cost-reimbursement contract; and
- whether the contractor had an adequate accounting system in place at contract award.

We tested Navy and Marine Corps contracts to determine whether contracting personnel were misclassifying cost-reimbursement contracts as firm-fixed-price contracts. We used the Federal Procurement Data System–Next Generation and Electronic Document Access to review the firm-fixed-price contracts. We reviewed between 40 and 50 firm-fixed-price contracts at each site to determine whether contracts contained cost-reimbursement line items. Although we used these systems during our audit, we did not use them as a material basis for our findings, recommendations, or conclusions.

Use of Computer-Processed Data

We did not rely on computer-processed data for this audit.

Use of Technical Assistance

The DoD Office of Inspector General Quantitative Methods Division (QMD) assisted with the audit. We worked with QMD during our planning phase to determine the number of sites per Service to visit and the number of contracts that should be reviewed at each site. QMD suggested that we should visit three to five sites per Service and have a nonstatistical sample of at least 30 contracts per site.

Prior Coverage

During the last 5 years, the Government Accountability Office, the Department of Defense Inspector General, the Department of Transportation Inspector General, the Department of Homeland Security Inspector General, the General Services Administration Inspector General, and the National Aeronautics and Space Administration Inspector General have issued eight reports discussing oversight of the use of cost-reimbursement contracts. Government Accountability Office reports can be accessed at www.gao.gov. Department of Defense Inspector General reports can be accessed at www.dodig.mil. Department of Transportation Inspector General Reports can be accessed at www.oig.dot.gov. Department of Homeland Defense Inspector General reports can be accessed at www.oig.dhs.gov. General Services Administration Inspector General reports can be accessed at www.gsaig.gov. National Aeronautics and Space Administration Inspector General reports can be accessed at www.oig.nasa.gov.

GAO

Report No. GAO-09-921, "Contract Management: Extent of Federal Spending Under Cost-Reimbursement Contracts Unclear and Key Controls Not Always Used," September 30, 2009

DoD IG

Report No. DODIG-2014-011, "Missile Defense Agency and Defense Microelectronics Activity Use of Cost-Reimbursement Contracts," November 22, 2013

Report No. DODIG-2013-120, "Army Needs Better Processes to Appropriately Justify and Manage Cost-Reimbursement Contracts," August 23, 2013

Report No. DODIG-2013-059, "Air Force Needs Better Processes to Appropriately Justify and Manage Cost-Reimbursable Contracts," March 21, 2013

DOT IG

Report No. ZA-2013-118, "DOT Does Not Fully Comply With Revised Federal Acquisition Regulations on the Use and Management of Cost-Reimbursement Awards," August 5, 2013

DHS IG

Report No. OIG-12-133, "Department of Homeland Security Compliance with the Federal Acquisition Regulation Revisions on Proper Use and Management of Cost-Reimbursement Contracts," September 28, 2012

GSA IG

Report No. A120052/Q/A/P12004, "Audit of GSA's Cost-Reimbursement Contracts," March 30, 2012

NASA IG

Report No. IG-12-014, "Final Memorandum on NASA's Compliance with Provisions of the Duncan Hunter National Defense Authorization Act 2009–Management of Cost-Reimbursement Contracts," March 14, 2012

Appendix B

Federal Acquisition Circular 2005-50 Issued March 16, 2011

Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Rules and Regulations 14543

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

[FAC 2005-50; FAR Case 2008-030; Item
I; Docket 2011-0082, Sequence 1]

RIN 9000-AL78

**Federal Acquisition Regulation; Proper
Use and Management of Cost-
Reimbursement Contracts**

AGENCIES: Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Interim rule with request for
comments.

SUMMARY: DoD, GSA, and NASA are
issuing an interim rule amending the
Federal Acquisition Regulation (FAR) to
implement section 864 of the Duncan
Hunter National Defense Authorization
Act for Fiscal Year 2009. This law aligns

Federal Acquisition Circular 2005-50 Issued March 16, 2011 (cont'd)

14544 Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Rules and Regulations

with the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which directed agencies to save \$40 billion in contracting annually by Fiscal Year (FY) 2011 and to reduce the use of high-risk contracts. This rule provides regulatory guidance on the proper use and management of other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour).

DATES: Effective Date: March 16, 2011.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before May 16, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-50, FAR Case 2008-030, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-030" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2008-030." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2008-030" on your attached document.

- *Fax:* (202) 501-4067.

- *Mail:* General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005-50, FAR Case 2008-030, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Lori Sakalos, Procurement Analyst, at (202) 208-0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-50, FAR Case 2008-030.

SUPPLEMENTARY INFORMATION:

I. Background

This case implements section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), enacted October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting.

Section 864 requires the FAR to be revised to address the use and management of cost-reimbursement contracts and identifies the following three areas that the Defense Acquisition Regulation Council and the Civilian Agency Acquisition Council (Councils) should consider in amending the FAR—

(a) Circumstances when cost-reimbursement contracts are appropriate;

(b) Acquisition plan findings to support the selection of a cost-reimbursement contract; and

(c) Acquisition resources necessary to award and manage a cost-reimbursement contract.

1. Guidance on Cost-reimbursement contracts.

As required, the Councils included additional coverage at FAR subpart 16.1, Selecting Contract Types, and at subpart 16.3, Cost-Reimbursement Contracts, to provide further guidance as to when, and under what circumstances, cost-reimbursement contracts are appropriate. Therefore, this rule makes the following changes:

- FAR 16.103, Negotiating contract type, is amended to revise paragraph (d) to reflect additional documentation when other than a firm-fixed-price contract type is selected.

- FAR 16.104, Factors in selecting contract types, is amended to add a new paragraph (e) to provide guidance to the contracting officer to consider combining contract types if the entire contract cannot be firm fixed-price.

- FAR 16.301-2, Application, is amended to provide guidance to the contracting officer as to the circumstances in which to use cost-reimbursement contracts as well as outlining the rationale for documentation for selecting this contract type.

- FAR 16.301-3, Limitations, is amended to (1) provide additional guidance to the contracting officer as to when a cost-reimbursement contract may be used, (2) ensure that all factors have been considered per FAR 16.104, and (3) ensure that adequate Government resources are available to award and manage this type of contract.

- FAR 7.104(e) also requires the designation of a properly trained contracting officer's representative (COR) (or contracting officer's technical representative (COTR)) prior to award of the contract or order.

2. *Identification of acquisition plan findings.* FAR 7.103, Agency-head responsibilities, is amended and renumbered to add new paragraphs 7.103(d), 7.103(f), and 7.103(j) to ensure that acquisition planners document the file to support the selection of the

contract type in accordance with FAR subpart 16.1; ensure that the statement of work is closely aligned with the performance outcomes and cost estimates; and obtain an approval and signature from the appropriate acquisition official at least one level above the contracting officer. FAR 7.105(b)(5)(iv) was added to discuss the strategy to transition from cost-reimbursement contracts to firm-fixed-price contracts. Although FAR 7.105(b)(5), Acquisition considerations, requires the acquisition plans to include a discussion of contract type selection and rationale, the Councils believe that a greater emphasis on the use of cost-reimbursement contracts should be added and included a new paragraph at FAR 7.105(b)(3), Contract type selection. Additionally, FAR 16.301-3(a) has been amended and renumbered.

3. Acquisition workforce resources.

The Councils recognize that assigning adequate and proper resources to support the solicitation, award, and administration of other than firm-fixed-price contracts (cost-reimbursement, time-and-material, and labor-hour) contract is challenging. There is also great concern that a lack of involvement in contract oversight by program offices is primarily present in other than firm-fixed-price contracts. Therefore, from the outset, contracting officers should be assured, to the greatest extent practicable, that the right resources in number, kind, and availability be assigned to support other than firm-fixed-price contracts. The Councils consider that greater accountability for the management and oversight of all contracts, especially other than firm-fixed-price contracts, can be gained and improved by requiring that properly trained CORs or COTRs (see FAR 2.101(b)(2), Definitions) be appointed before award. Therefore, FAR 7.104, General Procedures, and FAR 16.301-3(a)(4)(i) are amended to reflect that prior to award of a contract, especially on other than firm-fixed-price contracts, at least one COR or COTR qualified in accordance with FAR 1.602-2 is designated. FAR 1.602-2, Responsibilities, is amended to add a new paragraph (d) outlining the requirement for the contracting officer to designate and authorize, in writing, a COR on contracts and orders, as appropriate. Additionally, a new section was added at FAR 1.604, Contracting officer's representative, outlining the COR's duties.

4. Contract administration functions.

A new paragraph was added at FAR 42.302(a)(12) to require that the contracting officer determine the continuing adequacy of the contractor's

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accounting system during the entire period of contract performance. Also, paragraph (a)(12) was added to the list of functions at FAR 42.302(a) that cannot be retained and that must be delegated by the contracting officer when delegating contract administration functions to a contract administration office in accordance with FAR 42.202(a).

II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because section 864 affects only internal Government operations and requires the Government to establish internal guidance on the proper use and management of all contracts especially other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour) and does not impose any additional requirements on small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business entities and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-50, FAR Case 2008-030) in correspondence.

IV. Paperwork Reduction Act

The changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and

compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, enacted October 14, 2008, directs that it must be implemented within 270 days from enactment. This rule is also urgent because this law requires the Inspector General to conduct a compliance review for each executive agency, one year after the regulations have been promulgated, on the use of cost-reimbursement contracts and include the results of their findings in the IG's next semiannual report. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

Government procurement.

Dated: March 4, 2011.

Millisa Gary,
Acting Director, Office of Governmentwide Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

- 2. Amend section 1.602-2 by adding paragraph (d) to read as follows:

1.602-2 Responsibilities.

* * * * *

(d) Designate and authorize, in writing, a contracting officer's representative (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate. However, the contracting officer is not precluded from retaining and executing the COR duties as appropriate. See 7.104(e). A COR—

(1) Must be a Government employee, unless otherwise authorized in agency regulations;

(2) Shall be certified and maintain certification in accordance with the Office of Management and Budget memorandum entitled "The Federal Acquisition Certification for Contracting Officer Technical Representatives" dated November 26, 2007, or for DoD, DoD Regulations, as applicable;

(3) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines;

(4) May not be delegated responsibility to perform functions that have been delegated under 42.202 to a contract administration office, but may be assigned some duties at 42.302 by the contracting officer;

(5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and

(6) Must be designated in writing, with copies furnished to the contractor and the contract administration office—

- (i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;
- (ii) Identifying the limitations on the COR's authority;
- (iii) Specifying the period covered by the designation;
- (iv) Stating the authority is not redelegable; and
- (v) Stating that the COR may be personally liable for unauthorized acts.

- 3. Amend section 1.603 by revising the section heading to read as follows:

1.603 Selection, appointment, and termination of appointment for contracting officers.

* * * * *

- 4. Add section 1.604 to read as follows:

1.604 Contracting Officer's Representative (COR).

A contracting officer's representative (COR) assists in the technical monitoring or administration of a contract (*see* 1.602-2(d)). The COR shall maintain a file for each assigned contract. The file must include, at a minimum—

(a) A copy of the contracting officer's letter of designation and other documents describing the COR's duties and responsibilities;

(b) A copy of the contract administration functions delegated to a contract administration office which may not be delegated to the COR (*see* 1.602-2(d)(4)); and

(c) Documentation of COR actions taken in accordance with the delegation of authority.

PART 2—DEFINITIONS OF WORDS AND TERMS

- 5. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition "Contracting officer's representative (COR)" to read as follows:

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2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Contracting officer's representative (COR) means an individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

* * * * *

PART 7—ACQUISITION PLANNING

■ 6. Amend section 7.102 by adding paragraph (a)(3) to read as follows:

7.102 Policy.

(a) * * *

(3) Selection of appropriate contract type in accordance with part 16.

* * * * *

■ 7. Amend section 7.103 by—

- a. Redesignating paragraphs (e) through (w) as paragraphs (g) through (y);
- b. Redesignating paragraph (d) as paragraph (e);
- c. Adding a new paragraph (d);
- d. Revising newly redesignated paragraph (e);
- e. Adding a new paragraph (f); and
- f. Revising newly redesignated paragraph (j).

The added and revised text reads as follows:

7.103 Agency-head responsibilities.

* * * * *

(d) Ensuring that acquisition planners document the file to support the selection of the contract type in accordance with subpart 16.1.

(e) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, including for cost-reimbursement and other high-risk contracts (e.g., other than firm-fixed-price contracts) requiring a written acquisition plan. A written plan shall be prepared for cost reimbursement and other high-risk contracts other than firm-fixed-price contracts, although written plans may be required for firm-fixed-price contracts as appropriate.

(f) Ensuring that the statement of work is closely aligned with performance outcomes and cost estimates.

* * * * *

(j) Reviewing and approving acquisition plans and revisions to these plans to ensure compliance with FAR requirements including 7.104 and part 16. For other than firm-fixed-price contracts, ensuring that the plan is

approved and signed at least one level above the contracting officer.

* * * * *

■ 8. Amend section 7.104 by adding paragraph (e) to read as follows:

7.104 General procedures.

* * * * *

(e) The planner shall ensure that a COR is nominated by the requirements official, and designated and authorized by the contracting officer, as early as practicable in the acquisition process. The contracting officer shall designate and authorize a COR as early as practicable after the nomination. *See* 1.602–2(d).

■ 9. Amend section 7.105 by—

- a. Removing from the first sentence of the introductory text the words “*see* paragraph (b)(19)” and adding the words “*see* paragraph (b)(21)” in their place;
- b. Redesignating paragraphs (b)(3) through (b)(21) as paragraphs (b)(4) through (b)(22), respectively;
- c. Adding a new paragraph (b)(3);
- d. Removing from newly redesignated paragraph (b)(5)(i) the words “contract type selection (*see* part 16);”;
- e. Removing from newly redesignated paragraph (b)(5)(ii)(A) the words “*see* 7.103(t)” and adding the words “*see* 7.103(v)” in its place; and
- f. Adding paragraph (b)(5)(iv).

The added text reads as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(3) *Contract type selection.* Discuss the rationale for the selection of contract type. For other than firm-fixed-price contracts, *see* 16.103(d) for additional documentation guidance. Acquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, (e.g., complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. The contracting officer shall ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection.

* * * * *

(5) * * *

(iv) For each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract

requirements, e.g., contract line items (CLINS), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts. This will facilitate an easier transition to a firm-fixed-price contract because a cost history will be developed for a recurring definitive requirement.

* * * * *

PART 16—TYPES OF CONTRACTS

■ 10. Amend section 16.103 by revising paragraphs (d)(1) and (2) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * *

(1) Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or if a written acquisition plan is not required, in the contract file.

(i) Explain why the contract type selected must be used to meet the agency need.

(ii) Discuss the Government's additional risks and the burden to manage the contract type selected (e.g., when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss—

(A) How the Government identified the additional risks (e.g., pre-award survey, or past performance information);

(B) The nature of the additional risks (e.g., inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(C) How the Government will manage and mitigate the risks.

(iii) Discuss the Government resources necessary to properly plan for, award, and administer the contract type selected (e.g., resources needed and the additional risks to the Government if adequate resources are not provided).

(iv) For other than a firm-fixed price contract, at a minimum the documentation should include—

(A) An analysis of why the use of other than a firm-fixed-price contract (e.g., cost reimbursement, time and materials, labor hour) is appropriate;

(B) Rationale that detail the particular facts and circumstances (e.g.,

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complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(C) An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and

(D) A discussion of the actions planned to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.

(v) A discussion of why a level-of-effort, price redetermination, or fee provision was included.

(2) Exceptions to the requirements at (d)(1) of this section are—

(i) Fixed-price acquisitions made under simplified acquisition procedures;

(ii) Contracts on a firm-fixed-price basis other than those for major systems or research and development; and

(iii) Awards on the set-aside portion of sealed bid partial set-asides for small business.

* * * * *

■ 11. Amend section 16.104 by—

■ a. Redesignating paragraphs (e) through (k) as paragraphs (f) through (l), respectively;

■ b. Adding a new paragraph (e);

■ c. Removing from newly redesignated paragraph (f) the words “incentives to ensure” and adding the words “incentives tailored to performance outcomes to ensure” in their place;

■ d. Removing from newly redesignated paragraph (g) the words “price adjustment terms” and adding the words “price adjustment or price redetermination clauses” in their place; and

■ e. Revising newly redesignated paragraph (i).

The added and revised text reads as follows:

16.104 Factors in selecting contract types.

* * * * *

(e) *Combining contract types.* If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

* * * * *

(i) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall

ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical—

(1) When the contract type requires price revision while performance is in progress; or

(2) When a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. *See* 42.302(a)(12).

* * * * *

■ 12. Revise section 16.301–2 to read as follows:

16.301–2 Application.

(a) The contracting officer shall use cost-reimbursement contracts only when—

(1) Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract (*see* 7.105); or

(2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

(b) The contracting officer shall document the rationale for selecting the contract type in the written acquisition plan and ensure that the plan is approved and signed at least one level above the contracting officer (*see* 7.103(j) and 7.105). If a written acquisition plan is not required, the contracting officer shall document the rationale in the contract file. *See also* 16.103(d).

■ 13. Amend section 16.301–3 by revising paragraph (a) to read as follows:

16.301–3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) The factors in 16.104 have been considered;

(2) A written acquisition plan has been approved and signed at least one level above the contracting officer;

(3) The contractor's accounting system is adequate for determining costs applicable to the contract; and

(4) Adequate Government resources are available to award and manage a contract other than firm-fixed-priced (*see* 7.104(e)) including—

(i) Designation of at least one contracting officer's representative (COR) qualified in accordance with 1.602–2 has been made prior to award of the contract or order; and

(ii) Appropriate Government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used.

* * * * *

PART 32—CONTRACT FINANCING

32.1007 [Amended]

■ 14. Amend section 32.1007 by removing from paragraph (a) “(*see* 42.302(a)(12))” and adding “(*see* 42.302(a)(13))” in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 15. Amend section 42.302 by—

■ a. Removing from the introductory text of paragraph (a) the words “paragraphs (a)(5), (a)(9), and (a)(11)” and adding the words “paragraphs (a)(5), (a)(9), (a)(11), and (a)(12)” in their place;

■ b. Redesignating paragraphs (a)(12) through (a)(26) as paragraphs (a)(13) through (a)(27); and

■ c. Adding a new paragraph (a)(12) to read as follows:

42.302 Contract administration functions.

(a) * * *

(12) Determine the adequacy of the contractor's accounting system. The contractor's accounting system should be adequate during the entire period of contract performance. The adequacy of the contractor's accounting system and its associated internal control system, as well as contractor compliance with the Cost Accounting Standards (CAS), affect the quality and validity of the contractor data upon which the Government must rely for its management oversight of the contractor and contract performance.

* * * * *

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

50.205–1 [Amended]

■ 16. Amend section 50.205–1 by removing from the first sentence in paragraph (b) the words “(*see* FAR 7.105(b)(19)(v))” and adding the words “(*see* 7.105(b)(20)(v))” in their place.

[FR Doc. 2011–5552 Filed 3–15–11; 8:45 am]

BILLING CODE 6820–EP–P

Appendix C

Contract Compliance With Interim Rule Requirements

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
1	N65236-07-D-6868	663	SPAWAR	Yes	Yes	Yes	Yes	Yes	\$495,000
2	N65236-07-D-6875	108	SPAWAR	Yes	Yes	Yes	Yes	Yes	1,099,920
3	N65236-07-D-7882	60	SPAWAR	Yes	Yes	Yes	Yes	Yes	578,700
4	N65236-08-D-2833	62	SPAWAR	Yes	Yes	Yes	Yes	Yes	2,128,644
5	N65236-08-D-2834	139	SPAWAR	Yes	Yes	No	Yes	Yes	499,988
6	N65236-08-D-2835	170	SPAWAR	Yes	Yes	Yes	Yes	Yes	883,605
7	N65236-08-D-3802	193	SPAWAR	Yes	Yes	Yes	Yes	Yes	695,000
8	N65236-08-D-5803	84	SPAWAR	Yes	Yes	Yes	Yes	Yes	5,300,000
9	N65236-08-D-6805	796	SPAWAR	Yes	Yes	Yes	Yes	Yes	2,000,000
10	N65236-11-D-3839		SPAWAR	Yes	Yes	Yes	No	Yes	10,938,068
11	N65236-11-D-3847		SPAWAR	Yes	Yes	Yes	Yes	Yes	3,944,424
12	N65236-11-D-4800	2	SPAWAR	Yes	Yes	Yes	Yes	No	350,000
13	N65236-11-D-4805		SPAWAR	Yes	Yes	Yes	No	Yes	71,340,427
14	N65236-11-D-4806		SPAWAR	Yes	Yes	Yes	Yes	No	66,590,118
15	N65236-11-D-6852	5	SPAWAR	Yes	Yes	Yes	Yes	No	428,869
16	N65236-08-D-6809	41	SPAWAR	Yes	Yes	Yes	No	Yes	675,000
17	N65236-05-D-6849	27	SPAWAR	Yes	Yes	No	Yes	No	938,553
18	N65236-05-D-8836	305	SPAWAR	Yes	Yes	Yes	Yes	Yes	1,235,000
19	N65236-06-D-7869	8	SPAWAR	Yes	Yes	Yes	Yes	Yes	630,375

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Contract Compliance With Interim Rule Requirements (cont'd)

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
20	N65236-06-D-7873	69	SPAWAR	Yes	Yes	Yes	Yes	Yes	373,675
21	N65236-06-D-8848	1664	SPAWAR	Yes	Yes	Yes	Yes	Yes	177,850
22	N65236-07-D-5877	126	SPAWAR	Yes	Yes	Yes	Yes	Yes	465,535
23	N65236-07-D-5880	79	SPAWAR	Yes	Yes	Yes	Yes	Yes	216,345
24	N65236-07-D-5883	345	SPAWAR	Yes	Yes	Yes	Yes	Yes	36,002,973
25	N65236-07-D-5884	692	SPAWAR	Yes	Yes	Yes	Yes	Yes	17,716
26	N65236-11-D-6853	1	SPAWAR	Yes	Yes	Yes	Yes	Yes	2,764,036
27	N65236-12-C-3208		SPAWAR	Yes	Yes	Yes	Yes	Yes	710,216
28	N65236-12-D-3804		SPAWAR	Yes	Yes	Yes	No	Yes	3,954,607
29	N65236-12-D-4802	1	SPAWAR	Yes	Yes	Yes	Yes	Yes	2,995,070
30	N65236-09-D2700	152	SPAWAR	Yes	Yes	No	Yes	Yes	195,010
31	N65236-09-D-3806	24	SPAWAR	Yes	Yes	Yes	No	No	999,364
32	N65236-09-D-5180	20	SPAWAR	Yes	Yes	Yes	Yes	Yes	13,044,729
33	N65236-09-D-5821	110	SPAWAR	Yes	Yes	Yes	No	No	276,941
34	N65236-09-D-6816	87	SPAWAR	No	No	No	Yes	No	820,326
35	N65236-10-D-3810	33	SPAWAR	Yes	Yes	Yes	Yes	Yes	183,994
36	N65236-10-D-3815	142	SPAWAR	Yes	Yes	Yes	Yes	Yes	552,289
37	N65236-10-D-3818	14	SPAWAR	Yes	Yes	Yes	Yes	Yes	588,473
38	N65236-10-D-3820	2	SPAWAR	No	No	No	Yes	No	728,713
39	N65236-10-D-5829	5	SPAWAR	Yes	Yes	Yes	Yes	Yes	749,791
40	N65236-10-D-5830	6	SPAWAR	Yes	Yes	Yes	Yes	Yes	1,706,274

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Contract Compliance With Interim Rule Requirements (cont'd)

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
41	N65236-10-D-6823	9	SPAWAR	Yes	Yes	Yes	No	No	244,956
42	N65236-11-D-3837		SPAWAR	Yes	Yes	Yes	No	No	99,900,000
	SPAWAR Subtotal:			40	40	37	34	32	\$338,420,574
43	N00024-09-D-4208	43	NAVSEA	Yes	Yes	Yes	Yes	Yes	167,526
44	N00023-11-C-5106		NAVSEA	Yes	Yes	Yes	Yes	No	228,155,587
45	N00024-11-C-4401		NAVSEA	Yes	Yes	Yes	No	Yes	73,238,387
46	N00024-12-D-4120		NAVSEA	Yes	No	No	No	No	215,000,000
47	N00024-11-C-4408		NAVSEA	Yes	Yes	No	No	No	287,456,532
48	N00024-11-C-5213		NAVSEA	No	Yes	No	Yes	Yes	9,631,708
49	N00024-11-E-4310		NAVSEA	No	Yes	No	No	No	29,000,000
50	N00024-11-G-4226	2	NAVSEA	No	No	No	No	No	499,911
51	N00024-12-C-2107		NAVSEA	Yes	Yes	Yes	No	Yes	583,025,557
52	N00024-12-C-2400		NAVSEA	Yes	Yes	No	Yes	Yes	134,470,993
53	N00024-12-C-5102		NAVSEA	Yes	No	No	No	Yes	32,894,445
54	N00024-04-D-4066	EH09	NAVSEA	Yes	Yes	Yes	No	No	169,686,794
55	N00024-07-D-4130	962	NAVSEA	Yes	No	Yes	No	No	150,000
56	N00024-11-D-4115	17	NAVSEA	Yes	Yes	No	No	No	250,000
57	N00024-11-D-4229		NAVSEA	Yes	Yes	Yes	No	No	1,503,446,270
58	N00024-11-C-4000		NAVSEA	No	No	No	No	Yes	999,581
59	N00024-11-C-4005		NAVSEA	No	No	No	No	Yes	999,771
60	N00024-11-C-4010		NAVSEA	No	No	No	No	Yes	999,882
61	N00024-11-C-4014		NAVSEA	No	No	No	No	Yes	998,816

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Contract Compliance With Interim Rule Requirements (cont'd)

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
62	N00024-11-C-4017		NAVSEA	No	No	No	No	Yes	999,979
63	N00024-11-C-4003		NAVSEA	No	No	No	No	Yes	999,919
64	N00024-11-C-4129		NAVSEA	No	No	No	No	Yes	999,941
65	N00024-11-C-4138		NAVSEA	No	No	No	No	Yes	749,940
66	N00024-11-C-4165		NAVSEA	No	No	No	No	Yes	749,034
67	N00024-11-C-4173		NAVSEA	No	No	No	No	Yes	999,997
68	N00024-11-C-4180		NAVSEA	No	No	No	No	Yes	990,809
69	N00024-11-C-4181		NAVSEA	No	No	No	No	Yes	747,814
70	N00024-11-C-4184		NAVSEA	No	No	No	No	Yes	749,299
71	N00024-11-C-4188		NAVSEA	No	No	No	No	Yes	996,699
72	N00024-12-C-4113		NAVSEA	No	No	No	No	Yes	999,836
73	N00024-12-C-4134		NAVSEA	No	No	No	No	Yes	999,652
74	N00024-02-D-6604	838	NAVSEA	Yes	Yes	Yes	Yes	Yes	444,000
75	N00024-07-G-5433	3	NAVSEA	No	No	No	Yes	No	625,000
76	N00024-09-D-5212	43	NAVSEA	Yes	Yes	Yes	No	No	849,458
77	N00024-10-D-4203	16	NAVSEA	Yes	Yes	Yes	Yes	No	2,206,039
78	N00024-11-C-4224		NAVSEA	No	No	No	Yes	No	23,093,493
79	N00024-11-C-4407		NAVSEA	Yes	Yes	No	No	No	228,453,555
80	N00024-11-D-4002		NAVSEA	Yes	Yes	Yes	No	Yes	215,000,000
81	N00024-12-D-6402	1	NAVSEA	Yes	Yes	Yes	No	Yes	173,106
	NAVSEA Subtotal:			18	17	12	8	25	\$3,752,899,330

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Contract Compliance With Interim Rule Requirements (cont'd)

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
82	N00244-11-C-0039		NAVSUP	Yes	Yes	Yes	Yes	No	6,807,989
83	N00244-08-D-0034	61	NAVSUP	Yes	Yes	No	No	No	225,723
84	N00244-08-D-0014	5	NAVSUP	Yes	Yes	Yes	Yes	No	284,636
85	N00244-08-D-0036	11	NAVSUP	Yes	Yes	Yes	No	No	642,599
86	N00178-04-D-4143	NW02	NAVSUP	Yes	Yes	Yes	Yes	Yes	19,991,228
87	N00178-05-D-4364	NW02	NAVSUP	Yes	Yes	Yes	Yes	Yes	16,799,496
88	N00178-04-D-4065	NW01	NAVSUP	Yes	Yes	Yes	Yes	Yes	8,615,066
89	N00244-11-C-0035		NAVSUP	Yes	No	No	Yes	Yes	30,294,986
90	N00244-06-D-0049	15	NAVSUP	Yes	Yes	Yes	No	No	938,474
91	N00244-06-D-0049	16	NAVSUP	Yes	Yes	Yes	No	No	879,428
92	N00244-11-C-0045		NAVSUP	Yes	No	No	Yes	Yes	1,009,897
93	N00244-11-C-0020		NAVSUP	Yes	No	No	No	No	57,740,641
94	N00244-11-C-0034		NAVSUP	Yes	Yes	No	Yes	Yes	13,706,230
95	N00244-11-C-0032		NAVSUP	Yes	Yes	Yes	Yes	Yes	4,722,169
96	N00244-11-C-0019		NAVSUP	No	No	No	No	Yes	664,514
97	N00244-11-D-0019		NAVSUP	Yes	Yes	Yes	No	No	57,287,763
98	N00244-11-D-0020		NAVSUP	Yes	Yes	Yes	No	Yes	57,740,641
99	N00244-11-D-0023		NAVSUP	Yes	Yes	Yes	No	Yes	58,221,752
100	N00244-11-D-0024		NAVSUP	Yes	Yes	Yes	No	Yes	65,707,598
101	N00244-11-D-0026		NAVSUP	Yes	Yes	Yes	No	Yes	228,863,395
102	N00244-11-D-0028		NAVSUP	Yes	Yes	Yes	No	Yes	265,152,343
103	N00244-11-D-0029		NAVSUP	Yes	Yes	Yes	No	Yes	224,245,524

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Contract Compliance With Interim Rule Requirements (cont'd)

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
104	N00244-11-D-0030		NAVSUP	Yes	Yes	Yes	No	Yes	230,668,939
105	N00244-11-D-0031		NAVSUP	Yes	Yes	Yes	No	No	212,837,851
106	N00244-11-D-0032		NAVSUP	Yes	Yes	Yes	No	Yes	224,855,435
107	N00244-11-D-0033		NAVSUP	Yes	Yes	Yes	No	Yes	233,370,543
108	N00244-11-D-0034		NAVSUP	Yes	Yes	Yes	No	Yes	260,157,477
109	N00244-11-D-0036		NAVSUP	Yes	Yes	Yes	No	Yes	215,736,235
110	N00244-11-D-0037		NAVSUP	Yes	Yes	Yes	No	Yes	160,236,150
111	N00244-11-D-0038		NAVSUP	Yes	Yes	Yes	No	No	128,020,213
112	N00244-11-D-0039		NAVSUP	Yes	Yes	Yes	No	Yes	143,251,780
113	N00244-11-D-0041		NAVSUP	Yes	Yes	Yes	No	Yes	130,104,141
114	N00244-11-D-0042		NAVSUP	Yes	Yes	Yes	No	Yes	131,631,009
115	N00244-11-D-0045		NAVSUP	Yes	Yes	Yes	No	Yes	289,841,242
116	N00244-12-D-0005		NAVSUP	Yes	Yes	Yes	Yes	No	504,375
117	N00244-12-D-0006		NAVSUP	Yes	Yes	Yes	Yes	No	480,375
118	N00244-12-D-0008		NAVSUP	Yes	No	No	Yes	Yes	23,239,315
119	N00244-12-D-0008	3	NAVSUP	Yes	No	No	Yes	Yes	937,199
120	N00244-12-D-0008	4	NAVSUP	Yes	No	No	Yes	Yes	712,193
121	N00178-04-D-4092	NW01	NAVSUP	Yes	No	No	Yes	Yes	24,675,692
122	N00178-10-D-6117	NW01	NAVSUP	Yes	Yes	Yes	Yes	Yes	4,972,857
123	N00244-07-D-0039	8	NAVSUP	Yes	Yes	Yes	Yes	No	1,483,611
124	N00244-08-D-0030	4	NAVSUP	Yes	Yes	Yes	Yes	Yes	1,966,038
125	N00244-08-D-0039	341	NAVSUP	Yes	Yes	Yes	Yes	No	462,364

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Contract Compliance With Interim Rule Requirements (cont'd)

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
126	N00244-08-D-0039	344	NAVSUP	Yes	Yes	Yes	Yes	No	223,625
127	N00244-08-D-0039	361	NAVSUP	Yes	Yes	Yes	Yes	No	151,410
128	N00244-09-D-0018	21	NAVSUP	Yes	No	No	Yes	Yes	905,621
129	N00244-09-D-0018	23	NAVSUP	Yes	No	No	Yes	Yes	307,263
130	N00244-09-D-0018	22	NAVSUP	Yes	No	No	Yes	Yes	884,375
131	N00244-09-D-0023	2	NAVSUP	Yes	Yes	Yes	Yes	Yes	3,883,124
	NAVSUP Subtotal:			49	39	37	25	34	\$3,547,042,544
132	M67854-08-D-2007	19	QMCB	Yes	Yes	No	No	No	341,309
133	M67854-06-D-7009	22	QMCB	Yes	Yes	No	No	No	337,252
134	M67854-11-C-6534		QMCB	No	Yes	No	No	Yes	1,699,627
135	M67854-11-D-6004	1	QMCB	No	Yes	No	Yes	Yes	335,489
136	M67854-11-D-6004	4	QMCB	No	Yes	No	Yes	Yes	442,617
137	M67854-11-D-6004	5	QMCB	No	Yes	No	Yes	Yes	972,354
138	M67854-11-D-2219	2	QMCB	Yes	No	No	No	Yes	834,842
139	M67854-11-D-2219	3	QMCB	Yes	No	No	No	Yes	374,423
140	M67854-11-D-2219	4	QMCB	Yes	No	No	Yes	Yes	399,723
141	M67854-04-D-5016	123	QMCB	No	Yes	Yes	No	Yes	170,160
142	M67854-07-D-2057	20	QMCB	Yes	No	No	No	No	243,169
143	M67854-07-D-2057	21	QMCB	Yes	No	No	No	No	150,929
144	M67854-08-D-6040	182	QMCB	Yes	Yes	Yes	Yes	No	403,327
145	M67854-08-D-6040	191	QMCB	Yes	Yes	Yes	Yes	No	229,996
146	M67854-08-D-6040	220	QMCB	Yes	Yes	Yes	Yes	No	399,107

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Contract Compliance With Interim Rule Requirements (cont'd)

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
147	M67854-08-D-6040	227	QMCB	Yes	Yes	Yes	Yes	No	1,913,414
148	M67854-08-D-6040	235	QMCB	Yes	Yes	Yes	Yes	No	935,956
149	M67854-11-C-6541		QMCB	No	Yes	No	No	Yes	684,132
150	M67854-11-C-6537		QMCB	No	Yes	No	No	Yes	750,449
151	M67854-11-C-6538		QMCB	No	Yes	No	No	Yes	749,978
152	M67854-11-C-6540		QMCB	No	Yes	No	No	Yes	748,596
153	M67854-12-C-0025		QMCB	Yes	Yes	Yes	Yes	Yes	9,900,000
154	M67854-11-C-6505		QMCB	No	Yes	Yes	No	Yes	749,569
155	M67854-11-C-6519		QMCB	No	Yes	Yes	No	No	824,419
156	M67854-11-C-6533		QMCB	No	Yes	Yes	No	No	749,756
157	M67854-11-C-6535		QMCB	No	No	No	No	Yes	728,262
158	M67854-11-C-6539		QMCB	No	Yes	Yes	No	Yes	852,736
159	M67854-11-C-6542		QMCB	No	Yes	Yes	No	Yes	749,999
160	M67854-08-D-2007	20	QMCB	Yes	Yes	Yes	Yes	No	2,404,342
161	M67854-08-D-2007	21	QMCB	Yes	Yes	Yes	Yes	No	1,300,000
162	M67854-10-D-2200	12	QMCB	Yes	No	Yes	Yes	No	5,245,265
163	M67854-10-D-2200	18	QMCB	Yes	No	Yes	Yes	No	3,994,172
164	M67854-10-D-2200	19	QMCB	Yes	No	Yes	Yes	No	413,371
165	M67854-10-D-2200	22	QMCB	Yes	No	Yes	Yes	Yes	7,917,369
166	M67854-10-D-2200	24	QMCB	Yes	No	Yes	Yes	Yes	3,454,113
167	M67854-10-D-2203	14	QMCB	Yes	No	Yes	Yes	Yes	1,847,583
168	M67854-10-D-2203	15	QMCB	Yes	No	Yes	No	Yes	661,100

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Contract Compliance With Interim Rule Requirements (cont'd)

(Initial Site Visits April–July 2012)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
169	M67854-10-D-2203	17	QMCB	Yes	No	Yes	No	Yes	1,987,855
170	M67854-10-D-2203	19	QMCB	Yes	No	Yes	No	Yes	200,000
	QMCB Subtotal:			24	24	23	18	23	\$57,096,758
	Total of All Compliant Contracts:			131	120	109	85	114	
	Total of All Non-Compliant Contracts			39	50	61	85	56	
	Total CR Value of All Contracts Reviewed								\$7,695,459,207

Legend

CR: Cost Reimbursement
 NAVSEA: Naval Sea Systems Command Headquarters, Washington, D.C.
 NAVSUP: Naval Supply Fleet Systems Center–San Diego
 QMCB: Quantico Marine Corps Base, Virginia
 SPAWAR: Space and Naval Warfare Systems Command–Charleston

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

Appendix D

Contract Compliance With Interim Rule Requirements – Supplemental

(Updated September 2013 Site Visit)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
1	N00024-13-C-2108		NAVSEA	Yes	Yes	Yes	No	Yes	\$2,575,016,400
2	N00024-13-C-6264		NAVSEA	Yes	No	No	No	No	42,484,260
3	N00024 13-C-4052		NAVSEA	No	No	No	Yes	No	488,629
4	N00024-13-C-4055		NAVSEA	No	Yes	No	Yes	Yes	1,029,447
5	N00024-13-C-5207		NAVSEA	Yes	Yes	Yes	Yes	Yes	14,546,923
6	N00024-13-C-5202		NAVSEA	Yes	Yes	Yes	Yes	Yes	5,939,194
7	N00024-13-C-6402		NAVSEA	Yes	Yes	No	Yes	No	47,034,172
8	N00024-13-D-6400		NAVSEA	Yes	Yes	Yes	Yes	Yes	4,904,853,263
9	N00024-13-C-2112		NAVSEA	Yes	Yes	No	No	No	745,000,000
10	N00024-13-C-5132		NAVSEA	Yes	Yes	No	No	Yes	304,357,494
11	N00024-13-C-5225		NAVSEA	Yes	Yes	Yes	Yes	Yes	314,510,692
12	N00024-13-C-5403		NAVSEA	Yes	Yes	Yes	No	Yes	316,538,398
13	N00024-13-C-6300		NAVSEA	Yes	Yes	Yes	No	No	52,947,551
14	N00024-13-D-4100		NAVSEA	Yes	Yes	Yes	Yes	No	250,000,000
	NAVSEA Subtotal:			12	12	8	8	8	\$9,574,746,423
15	M67854-10-D-2103	8	QMCB	Yes	Yes	Yes	No	No	160,000
16	M67854-08-D-2007	24	QMCB	Yes	Yes	No	Yes	Yes	449,086
17	M67854-08-D-2007		QMCB	No	Yes	No	No	No	600,017
18	M67854-13-C-0221		QMCB	No	Yes	No	No	Yes	749,194

Acronyms used throughout Appendix D are defined on the final page of Appendix D.

Contract Compliance With Interim Rule Requirements – Supplemental (cont'd)

(Updated September 2013 Site Visit)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value
19	M67854-13C-6522		QMCB	No	Yes	No	Yes	Yes	749,500
20	M67854-13-C-6504		QMCB	No	Yes	No	Yes	Yes	749,780
21	M67854-10-D-2200	31	QMCB	Yes	Yes	Yes	Yes	Yes	888,685
22	M67854-13-C-0225		QMCB	No	Yes	No	Yes	Yes	475,711
23	M67854-13-C-6585		QMCB	No	Yes	No	Yes	Yes	977,946
24	M67854-13-C-0222		QMCB	No	Yes	No	No	No	977,696
25	M67854-13-C-6525		QMCB	No	Yes	No	No	Yes	973,982
26	M67854-13-C-6584		QMCB	No	Yes	No	Yes	Yes	1,398,955
27	M67854-10-D-2200	32	QMCB	Yes	Yes	Yes	Yes	Yes	2,496,521
28	M67854-13-C-6580		QMCB	No	Yes	Yes	No	No	2,974,597
29	M67854-13-C-6582		QMCB	No	Yes	No	Yes	Yes	2,999,8181
	QMCB Subtotal:			4	15	4	9	12	\$17,621,488
	Total of All Compliant Contracts:			16	27	12	17	20	
	Total of All Non-Compliant Contracts			13	2	17	12	9	
	Total CR Value of All Contracts Reviewed								\$9,592,367,911

Legend

CR: Cost Reimbursement

NAVSEA: Naval Sea Systems Command Headquarters, Washington, D.C.

QMCB: Quantico Marine Corps Base, Virginia

Management Comments

Naval Sea Systems Command Comments



DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
1333 ISAAC HULL AVE SE
WASHINGTON NAVY YARD DC 20376-0001

In Reply to:
7510
Ser 00N2C/111
5 Jun 14

From: Commander, Naval Sea Systems Command (SEA 00N)
To: Assistant Secretary of the Navy - Research, Development & Acquisition

Subj: NAVY AND MARINE CORPS HAVE WEAK PROCUREMENT PROCESSES FOR COST-REIMBURSEMENT CONTRACT ISSUANCE AND MANAGEMENT (DRAFT AUDIT REPORT D2013-D000CG-0211.000)

Ref: (a) DoDIG Draft Report No. D2013-D000CG-0211.000 of 6 May 14

Encl: (1) NAVSEA response to recommendations 1a through 1f.

1. Per reference (a), enclosure (1) provides the NAVSEA response to the subject report. Based on our review, we concur with the report's recommendations.

2. The point of contact for this audit is [REDACTED], who may be reached at [REDACTED] DSN [REDACTED] or via email at [REDACTED].

A handwritten signature in blue ink, appearing to read "D.W. Lucas", is positioned above the typed name.

D.W. LUCAS
Deputy Inspector General
By direction

Naval Sea Systems Command Comments (cont'd)

NAVSEA FOLLOW-UP RESPONSE

ON

DODIG AUDIT PROJECT #D2013-D000CG-0211.000

"Navy and Marine Corp Have Weak Procurement Processes for Cost-Reimbursement Contract Issuance and Management"

Recommendation 1.

Recommendation to the Deputy Director of Contracting Policy,
Naval Sea Systems Command Headquarters:

Recommendation 1a.

Emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts.

CONCUR. The NAVSEA Contracting Policy office (SEA 0212) will provide a notice to all NAVSEA contracting personnel of the importance of the contracting officer documenting the decision to use a cost reimbursement type contract the business clearance.

Target completion date: 30 June 2014

Recommendation 1b.

Develop checklists and guides that can be used by contracting personnel regarding the extra planning, approval, and oversight of cost-reimbursement contracts.

CONCUR. The NAVSEA Acquisition Planning Guide and NAVSEA Contracts Handbook will be revised to include specific language on the importance of considering the use of cost reimbursement contracts and documenting the decision. Additionally, the SEA 02 contracting training module for new contract specialists, entitled "Contract Types", will be amended to include information on the changed regulations for considering the use and administration of cost reimbursement contracts.

Target completion date: 30 September 2014

Naval Sea Systems Command Comments (cont'd)

Recommendation 1c.

Promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order.

CONCUR. An article on the use of hybrid contracts will be prepared and disseminated to the acquisition workforce in the NAVSEA Contract Policy Newsletter and Program Management Competency Newsletter.

Target completion date: 30 September 2014

Recommendation 1d.

Establish better communication channels between the required component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts when possible.

CONCUR. An article on importance of transitioning from cost reimbursement contract types to fixed price will be prepared and disseminated to the acquisition workforce in the NAVSEA Contract Policy Newsletter and Program Management Competency Newsletter. Consideration during the acquisition planning phase and procurement phase will be emphasized.

Target completion date: 30 September 2014

Recommendation 1e.

Include on the contracting officer's representative nomination forms a requirement that specifically states that the acknowledgement and return of the signed nomination letter is part of the duties in properly administering the contract.

CONCUR/COMPLETE. NAVSEA agrees that this acknowledgement is important. However, the current version of the NAVSEA COR Instruction 4200.17E directs the nominated COR to acknowledge appointment, in writing, on the appointment letter and return a copy to the appointing contracting officer and their supervisor. Therefore, NAVSEA believes that this recommendation has been implemented.

Naval Sea Systems Command Comments (cont'd)

Recommendation 1f.

Include a section in the business clearance memorandum or similar document to annotate the contracting officer's analysis and data relied on for the assessment of the contractor's accounting system.

CONCUR/COMPLETE. The NAVSEA Business Clearance template currently includes a requirement under Section II, question 6 for documenting that the CAO/DCAA has determined the adequacy of the Contractor's accounting system. The template is included under Part 53.15-1 of the NAVSEA Contracts Handbook, which was updated in March 2013. Therefore, NAVSEA believes that this recommendation has been implemented.

Prepared by: [REDACTED]
Date: 02 June 2014

Naval Supply Systems Command Comments



DEPARTMENT OF THE NAVY
NAVAL SUPPLY SYSTEMS COMMAND
5450 CARLISLE PIKE
PO BOX 2050
MECHANICSBURG PA 17055-0791

IN REPLY REFER TO
17510
Ser NOIG/026

JUN 06 2014

From: Commander, Naval Supply Systems Command
To: Department of Defense Office of Inspector General,
Program Director, Contract Management and Payments

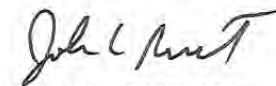
Subj: DODIG DRAFT AUDIT REPORT - NAVY AND MARINE CORPS HAVE
WEAK PROCUREMENT PROCESSES FOR COST-REIMBURSEMENT
CONTRACT ISSUANCE AND MANAGEMENT (PROJECT NO. D2013-
D0000CG-0211.000)

Ref: (a) DoDIG Draft Audit Report of 6 May 2014

Encl: (1) NAVSUP Response to DODIG Draft Report, "Navy and
Marine Corps Have Weak Procurement Processes for
Cost-reimbursement Contract Issuance and Management"
(Project No. D2013-D000CG-0211.000) of 6 May 2014

1. Per reference (a), enclosure (1) provides our comments on
Recommendations 2a, 2b and 2c.

2. For any questions, please contact our Chief of Staff, Captain [REDACTED]
[REDACTED] at [REDACTED], DSN [REDACTED], or e-mail at
[REDACTED].


JOHN C. GOODHART
Vice Commander

Copy to:
NAVINGEN

Naval Supply Systems Command Comments (cont'd)

NAVSUP Response to DEPARTMENT OF DEFENSE INSPECTOR GENERAL (DODIG) Draft Report, "Navy and Marine Corps Have Weak Procurement Processes for Cost-reimbursement Contract Issuance and Management" (Project No. D2013-D000CG-0211.000) of 6 May 2014

Finding-

Of the 170 contracts reviewed, valued at about \$7.7 billion, Navy and Marine Corps contracting personnel did not consistently implement the Federal Acquisition Regulation (FAR) revisions, called the interim rule, for 134 contracts, valued at about \$7.54 billion. Contracting personnel issued contracts that did not follow the interim rule because they were not clear about interim rule requirements or were unaware of the interim rule. As a result, contracting personnel continue to issue cost-reimbursement contracts that may increase DoD's contracting risks because cost-reimbursement contracts provide less incentive for contractors to control costs. We also completed a subsequent review of 29 contracts at Naval Sea Systems Command Headquarters and Quantico Marine Corps Base approximately 1 year after our initial site visit and determined that minor improvements occurred with the contract issuance processes.

Recommendation 2a: Chief of the Contracting Office, Naval Supply Center - San Diego: Emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts.

NAVSUP response:

Concur. NAVSUP Fleet Logistics Center San Diego (FLCSD) conducts recurring and regularly scheduled "Contracting Academy" sessions with organic facilitators. The training covers all FAR revisions to include higher headquarters and locally implemented policy and acquisition reforms. The internal seminars last approximately two hours and occur monthly. Additionally, FLCSD coordinates with the Defense Acquisition Mission Assistance Training team and schedules a West Region instructor with augmentation from local legal counsel to review policy and statutory changes, ensuring our workforce is current with regard to acquisition strategy and execution. To fully implement FAR revisions related to Cost-reimbursement contracts, FLCSD will provide training that details implementation guidance provided in the Interim Rule as required in Section 864 of the FY2009 National Defense Authorization Act, P.L. 110-417, documentation required prior to awarding other than firm-fixed-price

Enclosure (1)

Naval Supply Systems Command Comments (cont'd)

contracts. FLCSD will update its Internal Control and Quality Assurance Self-Assessment (QASA) Program to include an "interim rule" file review element to ensure the organization's buyers and specialists are following proper procedures as outlined in the Interim Rule. Target completion date is 30 June 2014.

Recommendation 2b: Chief of the Contracting Office, Naval Supply Center - San Diego: Include on the Contracting Officer's Representative nomination forms a requirement that specifically states that the acknowledgement and return of the signed nomination letter is part of the duties in properly administering the contract.

NAVSUP response:

Concur. In accordance with Assistant Secretary of the Navy (ASN) Research, Development, and Acquisition (RD&A) Memorandum dated 1 April 2011, the Contracting Officer's Representative Tracking (CORT) Tool will be used by all Department of Defense (DoD) components to track Contracting Officer Representative (COR) nominations, appointments, terminations, and training for all contracts when a COR is assigned unless a waiver is obtained from ASN (RD&A). The CORT Tool form is owned by DoD and operated by the Department of the Navy. FLCSD shall adhere to all CORT Tool requirements regarding COR nominations.

COR nominations are completed electronically using the CORT Tool. The COR nomination approvals are also completed electronically using the CORT Tool.

The actual COR appointment letter is the final document in the process. It is the indicator that the COR has been reviewed for technical qualifications and COR training, formally nominated and certified, approved by the supervisor/commander, and reviewed and appointed by the Procuring Contracting Officer. Additionally, a COR appointment letter is manually signed by the COR acknowledging that they have received and read the duties the Contracting Officer has appointed to them. The appointment letter states, "the COR and COR Nominating Official shall retain one copy of this letter, signed by the above parties, and shall return one copy to the Contracting Officer (and Ordering Officer) within 10 days of receipt for the contractor acknowledgment and final distribution." FLCSD requires the signed appointment letter to be uploaded into the CORT Tool and to be maintained in the contract file for QASA purposes.

Enclosure (1)

Naval Supply Systems Command Comments (cont'd)

Recommendation 2c: Chief of the Contracting Office, Naval Supply Center - San Diego: Include a section in the business clearance memorandum or similar document to annotate the contracting officer's analysis and data relied on for the assessment of the contractor's accounting system.

NAVSUP response:

Concur. In the new Navy Marine Corps Acquisition Regulation Supplement (NMCARS) Business Clearance Memorandum (Annex 2) for large dollar actions, a line item now exists requiring the Contracting Officer/Contracting Specialist to affirm the Contractor's Accounting System (CAS) is determined adequate by Contract Administration Office/Defense Contract Audit Agency in accordance with FAR 16.301-3. This form is required by all actions above the simplified acquisition threshold (greater than \$150,000). FLCSD will ensure all other negotiation documentation for low-dollar value actions contain the same line item in non-commercial type actions (Simplified Acquisition Procedure commercial buys cannot be Cost-reimbursable). FLCSD will update its Internal Control and QASA Program to include a "CAS Compliance" file review element to ensure the organization's buyers and specialists are following proper procedures as outlined in the Interim Rule. Target completion date is 30 June 2014.

Enclosure (1)

Marine Corps Systems Command Comments



UNITED STATES MARINE CORPS
MARINE CORPS SYSTEMS COMMAND
2200 LESTER STREET
QUANTICO, VIRGINIA 22134-5010

IN REPLY REFER TO:

4300
DCRM
MAY 28 2014

From: Commander
To: Department of Defense Inspector General

Subj: UNITED STATES MARINE CORPS COMMENTS TO DEPARTMENT OF
DEFENSE INSPECTOR GENERAL RECOMMENDATIONS NAVY AND
MARINE CORPS HAVE WEAK PROCUREMENT PROCESSES FOR
COST-REIMBURSEMENT CONTRACT ISSUANCE AND MANAGEMENT

Ref: (a) DODIG Draft Report of 6 May 2014

1. Marine Corps Systems Command (MCSC) completed its review of the findings and recommendations encompassed in the reference.

2. In response with those recommendations, MCSC submits the following concurrence and any completed or planned corrective actions:

a. Recommendation 3.a. Department of Defense Inspector General (DODIG) recommends that the Assistant Commander of Contracts (AC CT), MCSC emphasize the importance of the Federal Acquisition Regulation (FAR) revisions to contracting personnel for the use of cost-reimbursable contracts.

Marine Corps Response: MCSC concurs with this recommendation. AC CT has taken corrective action to implement this across the competency.

The summary of changes published in Federal Acquisition Circular 2005-50 was provided to the Contracts Directorate on 9 May 2011, via the Contracts Portal and all-hands e-mail. AC CT disseminated and then briefed the Lead Contracting Officers in person regarding the regulatory changes.

AC CT will continue to require that Contracts publish summaries of regulatory and policy changes on a bi-weekly basis via email and the Contracts portal. In addition, Contracts will continue to hold bi-weekly meetings to brief the Lead Contracting Officers on these changes, with an emphasis on the need to pass this information on throughout the Contracts Directorate.

b. Recommendation 3.b. DODIG recommends that the AC CT of MCSC develop checklists and guides that can be used by

Marine Corps Systems Command Comments (cont'd)

Subj: UNITED STATES MARINE CORPS COMMENTS TO DEPARTMENT OF DEFENSE INSPECTOR GENERAL RECOMMENDATIONS NAVY AND MARINE CORPS HAVE WEAK PROCUREMENT PROCESSES FOR COST-REIMBURSEMENT CONTRACT ISSUANCE AND MANAGEMENT

contracting personnel regarding the extra planning, approval, and oversight of cost-reimbursement contracts.

Marine Corps Response: MCSC concurs with the recommendation. AC CT has taken corrective action to implement this across the competency.

To ensure complete and consistent contract file documentation, AC CT signed CT Policy Letter 12-03 of 25 Jan 2012. This policy letter requires use of a standard contract file checklist, which specifically identifies "Documentation of Contract Type" for inclusion and cites FAR 16.103 as the authority. This policy letter and the checklist are currently undergoing revision to provide additional detail for contract file documentation, with an expected release date later in Fiscal Year 2014.

The Contracts Competency Manager has introduced a course titled "Contracts Documentation" in May 2010, with a companion course introduced in March 2014. These courses are mandatory for the MCSC Contracts Workforce as part of the Command's Kapstone training program. The courses do include the FAR references for documenting contract types, and the Participant Guides are undergoing revision to provide additional detail on the documentation for cost-reimbursable contracts. The course material will be complete by July 2014.

c. Recommendation 3.c. DODIG recommends that AC CT, MCSC promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order.

Marine Corps Response: MCSC concurs with this recommendation.

AC CT will identify hybrid contracting as a best practice to the MCSC Contracting Competency. The use of this tool will be identified and analyzed during the acquisition strategy for each procurement.

AC CT is in the process of preparing an agency supplement with local area policies and procedures, scheduled for approval and release in 2015. This recommendation will be incorporated into the agency supplement, which will be available for the Contracts Directorate via the shared portal. The BizOps team intends to issue change pages to the supplement, rather than issuing individual policy notices and policy letters in the future, so that personnel can find all available information on a topic in a single place, which facilitates research and implementation.

Marine Corps Systems Command Comments (cont'd)

Subj: UNITED STATES MARINE CORPS COMMENTS TO DEPARTMENT OF DEFENSE INSPECTOR GENERAL RECOMMENDATIONS NAVY AND MARINE CORPS HAVE WEAK PROCUREMENT PROCESSES FOR COST-REIMBURSEMENT CONTRACT ISSUANCE AND MANAGEMENT

d. Recommendation 3.d. DODIG recommends that AC CT, MCSC establish better communication channels between the requiring component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts whenever practical.

Marine Corps Response. MCSC concurs with this recommendation. The AC CT is currently undertaking corrective action to address this recommendation with an anticipated completion date of September 2014.

The MCSC issued a Command Order in September 2009, which required that each competency (Contracts, Logistics, Engineering, Program Management, and Finance) coordinate completion, staffing, and approval of each new requirements package with an obligation value exceeding \$100K. This order was meant to encourage acquisition planning using an Integrated Product Team (IPT) approach.

The order is currently undergoing revision, with a planned approval date of September 2014. As part of the revision, the order explicitly states that Contracting Officers shall actively participate in document coordination and review during the acquisition planning phase. This presents an avenue early in the planning process for the requiring activity and contracting personnel to address acquisition considerations including contract-type transitions. In addition, the revised form requires signature by two levels of Contracts personnel, thus ensuring that the completed Procurement Request package complies with all policy and regulatory requirements.

e. Recommendation 3.e. DODIG recommends that AC CT, MCSC develop controls to ensure that a contracting officer's representative (COR) is assigned to each contract at contract award to meet the requirements of the interim rule.

Marine Corps Response: MCSC concurs with the recommendation. The AC CT is currently undertaking corrective action to implement this with an anticipated completion date of September 2014.

MCSC has a Command Order in process which addresses the requirements for assigning and monitoring COR. The Order requires that a COR be assigned for all contracts which are not firm-fixed price at time of award. It additionally implements qualification requirements based on contract type and complexity.

Marine Corps Systems Command Comments (cont'd)

Subj: UNITED STATES MARINE CORPS COMMENTS TO DEPARTMENT OF
DEFENSE INSPECTOR GENERAL RECOMMENDATIONS NAVY AND
MARINE CORPS HAVE WEAK PROCUREMENT PROCESSES FOR
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The Contracts Competency Manager introduced a course titled "Monitoring your COR" in July 2012, as part of the Command's Kapstone training program. This course addresses the requirements for assigning a COR, as well as the methods for overseeing the COR's files and performance during the course of the contract. The Command also implemented use of the CORT tool in 2012, which facilitates the delegation and oversight process.

The AC CT established the position of MCSC COR Coordinator as one of the controls for ensuring COR oversight and performance in November 2012. This position is responsible for conducting periodic reviews of COR files for adequacy, periodic review of COR monthly reports for sufficiency, and reviewing Contracting Officer's Annual COR Performance Assessment Reports from Contracting Supervisors for compliance. In addition, the COR files are reviewed as part of the annual internal Procurement Performance Management Assessment Program reviews conducted by the AC CT.

3. The MCSC points of contact for this matter are [REDACTED]
[REDACTED] at (703) [REDACTED], email at [REDACTED] and
[REDACTED] at (703) [REDACTED], email at [REDACTED].

Michelle Cresswell

MICHELLE CRESSWELL
Deputy Commander
Resource Management

Acronyms and Abbreviations

COR	Contracting Officer's Representative
FAC	Federal Acquisition Circular
FAR	Federal Acquisition Regulations
NAVSEA	Naval Sea Systems Command
NAVSUP	Naval Supply Systems Command
QMCB	Quantico Marine Corps Base
SBIR	Small Business Innovation Research
SPAWAR	Space and Naval Warfare Systems Command



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U.S. DEPARTMENT OF DEFENSE

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